ISSN 1608-9618
H/Inf (2005) 1

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Human rights information bulletin

Oslo, Norway
Host to the High Level Seminar on Reform of the European Human Rights System, 18 October 2004

No. 63, July-November 2004

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Published three times a year by: Directorate General of Human Rights, Council of Europe, F-67075 Strasbourg Cedex. This issue published January 2005. ISSN: 1608-9618 (print edition) and 1608-7372 (electronic edition). Internet address: http://www.coe.int/human_rights/.

Treaties and conventions

New member state

On 5 October 2004 Monaco joined the Council of Europe, signing the Statute and a number of other important instruments, including the European Convention on Human Rights (see below).

His Serene Highness Prince Albert at the ceremony marking the accession of Monaco to the Council of Europe

Signatures and ratifications

More detailed information is available in the "Simplified chart of signatures and ratifications of European human rights treaties" in the appendix, or on the Treaty Office's web site, http://conventions.coe.int/.

Albania

On 10 November 2004 Albania signed Protocol No. 14 to the European Convention on Human Rights.

On 26 November 2004 Albania ratified Protocol No. 12 to the European Convention on Human Rights.

Andorra

On 12 November 2004 Andorra signed Protocol No. 14 to the European Convention on Human Rights and ratified the European Social Charter (revised).

Austria

On 10 November 2004 Austria signed Protocol No. 14 to the European Convention on Human Rights.

Azerbaijan

On 2 September 2004 Azerbaijan ratified the European Social Charter (revised).

Bosnia and Herzegovina

On 10 November 2004 Bosnia and Herzegovina signed Protocol No. 14 to the European Convention on Human Rights.

Czech Republic

On 2 July 2004 the Czech Republic signed Protocol No. 13 to the European Convention on Human Rights.

Denmark

On 10 November 2004 Denmark ratified Protocol No. 14 to the European Convention on Human Rights.

Finland

On 29 November 2004 Finland ratified Protocol No. 13 to the European Convention on Human Rights and signed Protocol No. 14.

Georgia

On 10 November 2004 Georgia ratified Protocol No. 14 to the European Convention on Human Rights.

Germany

On 11 October 2004 Germany ratified Protocol No. 13 to the European Convention on Human Rights.

On 10 November 2004 Germany signed Protocol No. 14 to the European Convention on Human Rights.

Hungary

On 7 October 2004 Hungary signed the European Social Charter (revised), together with its Additional Protocol and Additional Protocol Providing for a System of Collective Complaints.

Iceland

On 10 November 2004 Iceland ratified Protocol No. 13 to the European Convention on Human Rights.

Ireland

On 10 November 2004 Ireland ratified Protocol No. 14 to the European Convention on Human Rights.

Liechtenstein

On 20 September 2004 Liechtenstein signed Protocol No. 14 to the European Convention on Human Rights.

Lithuania

On 10 November 2004 Lithuania signed Protocol No. 14 to the European Convention on Human Rights.

Malta

On 4 October 2004 Malta signed and ratified Protocol No. 14 to the European Convention on Human Rights.

Moldova

On 10 November 2004 Moldova signed Protocol No. 14 to the European Convention on Human Rights.

Monaco

On 5 October 2004 Monaco became the Council of Europe's 46th member state and signed the following instruments:

- the Statute of the Council of Europe;
- the European Convention on Human Rights, together with its Protocols Nos. 1, 2, 3, 4, 5, 6, 7, 8, 11 and 13;
- the European Social Charter (revised).

On 10 November 2004 Monaco signed Protocol No. 14 to the European Convention on Human Rights.

Netherlands

On 28 July 2004 the Netherlands ratified Protocol No. 12 to the European Convention on Human Rights.

Norway

On 10 November 2004 Norway ratified Protocol No. 14 to the European Convention on Human Rights.

Poland

On 10 November 2004 Poland signed Protocol No. 14 to the European Convention on Human Rights.

Serbia and Montenegro

On 1 July 2004 the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, together with its Protocols Nos. 1 and 2, entered into force in respect of Serbia and Montenegro.

On the same date, Protocol No. 13 of the European Convention on Human Rights entered into force in respect of Serbia and Montenegro.

On 10 November 2004 Serbia and Montenegro signed Protocol No. 14 to the European Convention on Human Rights.

Slovakia

On 22 October 2004 Slovakia signed Protocol No. 14 to the European Convention on Human Rights.

Sweden

On 3 September 2004 Sweden signed Protocol No. 14 to the European Convention on Human Rights.

"The former Yugoslav Republic of Macedonia"

On 13 July 2004 "the former Yugoslav Republic of Macedonia" ratified Protocols Nos. 12 and 13 to the European Convention on Human Rights.

On 15 September 2004 "the former Yugoslav Republic of Macedonia" signed Protocol No. 14 to the European Convention on Human Rights.

Turkey

On 6 October 2004 Turkey signed the European Social Charter (revised) and the Protocol amending the European Social Charter; and, on the same date, Protocol No. 14 to the European Convention on Human Rights.

Ukraine

On 10 November 2004 Ukraine signed Protocol No. 14 to the European Convention on Human Rights.

United Kingdom

On 13 July 2004 the United Kingdom signed Protocol No. 14 to the European Convention on Human Rights.

European Court of Human Rights

Introduction

Between 1 July and 31 October 2004, the Court dealt with 10 353 (10 405) cases:
- 267 (291) judgments delivered,
- 279 (293) applications declared admissible,
- 7 869 (7 870) applications declared inadmissible,
- 993 (995) applications struck off the list,
- 945 (956) applications communicated to governments.

(provisional figures)

The difference between the first figure and the figure in parentheses is due to the fact that a judgment or decision may concern more than one application.

Owing to the large number of judgments delivered by the Court, only those delivered by the Grand Chamber, together with a selection of chamber judgments, are presented. Exhaustive information can be found in the Court's press releases and monthly case law information Notes, published on its web site, and, for more specific searches, in the Hudoc database of the case law of the Convention:

http://www.echr.coe.int/

http://hudoc.echr.coe.int/

The summaries have been prepared for the purposes of the present Bulletin and are not binding on the supervisory organs of the European Convention on Human Rights.

Judgments of the Grand Chamber

Ilaşcu and Others v. Moldova and Russia

Judgment of 8 July 2004

Alleged violations of: Articles 1 (State jurisdiction), 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 6 (right to a fair trial), 8 (right to respect for private and family life), 34 (right of individual petition) of the Convention and 1 of Protocol No. 1 (protection of property)

Principal facts and complaints

Note: Following the dissolution of the Soviet Union, the Moldovan Parliament adopted a declaration of independence in 1991. Separatists in the Transdniestrian region of Moldova had already proclaimed the "Moldavian Republic of Transdniestria" (MRT), which has not been recognised by the international community. Violent clashes broke out, during which the separatists obtained weapons from troops of the Soviet Union (subsequently the Russian Federation) which had remained in Moldovan territory, some of whom joined the separatists. In July 1992 a ceasefire agreement was reached between Moldova and the Russian Federation, providing for the withdrawal of the two sides and the creation of a security zone. A further agreement providing for the withdrawal of Russian troops was signed in 1994 but was never ratified by the Russian Federation. In 1997 the President of Moldova and the President of the MRT signed a memorandum laying down the basis for the normalisation of relations. Since then, further negotiations have taken place.

In this context, the four applicants were arrested in June 1992 and accused of anti-Soviet activities, fighting by illegal means against the State of Transdniestria and other offences, including murder. They were convicted in December 1993 by the Supreme Court of the MRT, which sentenced Mr Ilaşcu to death and the others to lengthy terms of imprisonment. The Supreme Court of Moldova examined the judgment of its own motion and quashed it, ordering the applicants' release, but the MRT authorities did not respond to this judgment. Following their conviction, the applicants were held in single cells with no natural light. Their health deteriorated but they did not receive proper medical treatment. The conditions of their detention worsened after their application was lodged with the Court. Mr Ilaşcu was released in May 2001 and one of the other applicants was released in June 2004; the two remaining were still detained at the time of the present judgment.

The applicants complained that the court which had convicted them did not have jurisdiction and that the proceedings which had led to their conviction had not been fair. They maintained that their detention had been unlawful and denounced the conditions of it. They also complained of the confiscation of their possessions. Mr Ilaşcu further put forward a violation of Article 2 on account of his being sentenced to death.

They submitted that the Moldovan authorities were responsible for the violations they alleged since they had not taken adequate measures to put a stop to them. In their submission, the Russian Federation shared that responsibility as the territory of Transdniestria was under Russia's *de facto* control owing to the stationing of its troops and military equipment there and the support it gave to the separatists.

Decision of the Court

Article 1

Whether the applicants came within the jurisdiction of Moldova:

On the basis of all the material in its possession, the Court considered that the Moldovan Government, the only legitimate government of the Republic of Moldova under international law, did not exercise authority over part of its territory, namely that part which was under the effective control of the "MRT". However, even in the absence of effective control over the Transdniestrian region, Moldova still had a positive obligation under Article 1 of the Convention to take the measures within its power to secure to the applicants the rights guaranteed by the Convention.

Consequently, the applicants were within the jurisdiction of the Republic of Moldova for the purposes of Article 1, but its responsibility for the acts complained of was to be assessed in the light of its positive obligations under the Convention. These related both to the measures needed to re-establish its control over the Transdniestrian territory, as an expression of its jurisdiction, and to measures to ensure respect for the applicants' rights, including attempts to secure their release.

As regards the applicants' situation, the Court noted that before ratification of the Convention in 1997 and even after that date the Moldovan authorities had taken a

number of measures to secure the applicants' rights. On the other hand, it did not have any evidence that since Mr Ilaşcu's release in May 2001 effective measures had been taken to put an end to the continuing infringements of their Convention rights complained of by the other applicants. In their bilateral relations with the Russian Federation the Moldovan authorities had not been any more attentive to the applicants' fate; the Court had not been informed of any approach by the Moldovan authorities to the Russian authorities after May 2001 aimed at obtaining the remaining applicants' release.

Even after Mr Ilaşcu's release in May 2001, it had been within the power of the Moldovan Government to take measures to secure to the applicants their rights under the Convention. The Court accordingly concluded that Moldova's responsibility was capable of being engaged on account of its failure to discharge its positive obligations with regard to the acts complained of which had occurred after May 2001.

Whether the applicants came within the jurisdiction of the Russian Federation:

During the Moldovan conflict in 1991-1992 forces of the former Fourteenth Army (which owed allegiance to the USSR, the CIS and the Russian Federation in turn) stationed in Transdniestria, fought with and on behalf of the Transdniestrian separatist forces. Large quantities of weapons from the stores of the Fourteenth Army were voluntarily transferred to the separatists, who were also able to seize possession of other weapons unopposed by Russian soldiers. In addition, throughout the clashes between the Moldovan authorities and the Transdniestrian separatists the Russian leaders supported the separatist authorities by their political declarations.

The Russian authorities therefore contributed both militarily and politically to the creation of a separatist regime in the region of Transdniestria, part of the territory of the Republic of Moldova. Even after the ceasefire agreement of 21 July 1992, Russia continued to provide military, political and economic support to the separatist regime, thus enabling it to survive by strengthening itself and by acquiring a certain amount of autonomy vis-à-vis Moldova. In the Court's opinion, all of the acts committed by Russian soldiers with regard to the applicants, including their transfer into the charge of the separatist regime, in the context of the Russian authorities' collaboration with that illegal regime, were capable of engaging responsibility for the consequences of the acts of that regime.

The Russian Army was still stationed on Moldovan territory in breach of the undertakings to withdraw them completely given by Russia at the OSCE summits in 1999 and 2001. Both before and after 5 May 1998, when the Convention came into force with regard to Russia, the "MRT" regime continued to deploy its troops illegally and to manufacture and sell weapons in the security zone controlled by the Russian peacekeeping forces in breach of the agreement of 21 July 1992. All of the above proved that the "MRT" remained under the effective authority, or at the very least under the decisive influence, of Russia, and in any event that it survived by virtue of the military, economic, financial and political support that Russia gave it.

That being so, the Court considered that there was a continuous and uninterrupted link of responsibility on the part of Russia for the applicants' fate, as its policy of support for the regime and collaboration with it continued beyond 5 May 1998, and after that date Russia made no attempt to put an end to the applicants' situation brought about by its agents and did not act to prevent the violations allegedly committed. The applicants therefore came within the "jurisdiction" of Russia and its responsibility was engaged with regard to the acts complained of.

The Court's jurisdiction ratione temporis*:*

The Court observed that the Convention had come into force with regard to Moldova on 12 September 1997 and with regard to Russia on 5 May 1998. It pointed out that the Convention applied only to events subsequent to its entry into force with regard to the Contracting States concerned.

Consequently, the Court did not have jurisdiction to examine the complaint under Article 6 and had jurisdiction to examine those under Articles 3, 5 and 8 only in so far as they concerned events subsequent to the dates on which the Convention had entered into force with regard to Moldova and Russia. Lastly, the Court had jurisdiction to examine Mr Ilaşcu's complaint under Article 2.

Article 2

While the death sentence imposed on Mr Ilaşcu had been set aside by the Moldovan Supreme Court in 1994, that judgment had no effect. The Court was not in a position to establish the exact circumstances of his release or whether the death sentence had been commuted, but since the applicant was now living in Romania as a Romanian national, the risk of enforcement was more hypothetical than real.

On the other hand he must have suffered both from the existence of the death sentence and from his conditions of detention; that being so, the Court considered that the facts complained of by Mr Ilaşcu did not call for a separate examination under Article 2 of the Convention, but would be more appropriately examined under Article 3 instead.

Article 3

As regards Mr Ilaşcu:

The Court considered that during the very long period he spent on "death row" the applicant lived in constant fear of execution, unable to exercise any remedy; his anguish was aggravated by fact that the sentence had no legal basis or legitimacy, in view of the patently arbitrary nature of the circumstances in which the applicants had been tried. The conditions in which Mr Ilaşcu was held had a deleterious effect on his health and he did not receive proper medical care or nutrition. Moreover, the discretionary powers in relation to correspondence and visits were arbitrary and made the conditions of detention even harsher. There had been a failure to observe the requirements of Article 3 and the treatment to which the first applicant had been subjected amounted to torture. The Russian Federation was responsible for that treatment, whereas since Moldova's responsibility was engaged only after the time of his release there had been no violation by Moldova.

As regards Mr Ivanţoc:

The treatment of the applicant and the conditions in which he had been kept, denied proper food and medical care, amounted to torture. As he remained in these conditions, the responsibility of both States was engaged as from the respective dates of ratification.

As regards Mr Lesco and Mr Petrov-Popa:

The Court considered that it could take it as established that during their detention the applicants had experienced extremely harsh conditions of detention which could be termed inhuman and degrading treatment. As Mr Lesco and Mr Petrov-Popa were detained at the time when the Convention came into force with regard to Russia, the latter was responsible for the violation of Article 3, as was Moldova.

Article 5

The Court found that none of the applicants had been convicted by a "court", and that a sentence of imprisonment passed by a judicial body such as the "Supreme Court of the MRT" at the close of proceedings like those conducted in the present case could not be regarded as "lawful detention" ordered "in accordance with a procedure prescribed by law". That being so, there had been a violation of Article 5 § 1 of the Convention until May 2001 as regards Mr Ilaşcu, and there had been and continued to be a violation of that provision as regards the applicants still detained.

Having regard to the fact that the applicants were detained at the time of the Convention's entry into force with regard to Russia, the Court concluded that the conduct constituting a violation of Article 5 was imputable to the Russian Federation as regards all the applicants. Taking into account its conclusion that the responsibility of the Republic of Moldova by virtue of its positive obligations was engaged from May 2001, the Court concluded that there had been no violation of Article 5 by Moldova as regards Mr Ilaşcu, but a violation of that provision as regards the other applicants.

Article 8

The Court considered that it was not necessary to examine the complaints concerning their deprivation of contact with the outside world, which had been taken into account in the context of Article 3.

Article 1 of Protocol No. 1

Even supposing the Court had jurisdiction *ratione temporis* to examine the applicants' complaint that their property had been confiscated following their trial, the complaint had not been substantiated.

Article 34

The applicants claimed that they had not been able to apply to the Court and that their wives had had to do so on their behalf. Moreover, they had been threatened and the conditions of their detention had deteriorated after their application was lodged. Such acts constituted an improper and unacceptable form of pressure which hindered exercise of the right of petition.

In addition, the Court noted with concern the content of a note of April 2001 sent by Russia to the Moldovan authorities, from which it appeared that the Russian authorities had requested Moldova to withdraw the observations it had submitted to the Court in October 2000 in so far as these implied responsibility on the part of Russia on account of the fact that its troops were stationed in Moldovan territory, in Transdniestria. Such conduct on the part of the Russian Government represented a negation of the common heritage of political traditions, ideals, freedom and the rule of law mentioned in the Preamble to the Convention and were capable of seriously hindering the Court's examination of an application lodged in exercise of the right of individual petition and thereby interfering with the right guaranteed by Article 34 of the Convention itself. There had therefore been a breach by Russia of Article 34 of the Convention.

Furthermore, remarks by the Moldovan President following the first applicant's release, making an improvement in the applicants' situation dependent on withdrawal of the application represented direct pressure intended to hinder exercise of the right of petition and amounted to a breach of Article 34 by Moldova.

The Court awarded, in respect of pecuniary and non-pecuniary damage, 180 000 euros to Mr Ilaşcu and 120 000 euros to each of the other applicants. It also awarded each applicant 7 000 euros in respect of the breach of Article 34. It further made an award in respect of costs and expenses.

Vo v. France

Judgment of 8 July 2004

Alleged violation of: Article 2 (right to life)

Principal facts and complaints

Owing to a mix-up caused by the fact that two patients attending the same hospital department shared the same surname, a doctor carried out a medical act, intended for another person, on the applicant, despite the fact that she was pregnant. As a result of this error the applicant was obliged to undergo a therapeutic abortion. The foetus, which was healthy, was at that stage aged between 20 and 21 weeks. The applicant lodged a criminal complaint for unintentional physical injury to herself and homicide against her unborn child. The offence against the applicant was covered by an amnesty. With regard to the foetus, the Court of Cassation held that the fact of a doctor causing the death *in utero* of a human foetus which was not yet viable through carelessness or negligence did not constitute the offence of involuntary homicide, as the foetus was not considered as a human being entitled to the protection of criminal law.

The applicant complained of the authorities' refusal to classify the unintentional killing of her unborn child as involuntary homicide and on the lack of legislation making such acts a criminal offence.

Decision of the Court

There was no clear legal definition in French law of the unborn child or a European consensus on the status of the embryo. The Court did not rule on whether the unborn child was a person for the purposes of Article 2. Noting in the instant case that the dispute concerned an involuntary fatal injury to the unborn child, counter to the mother's wishes and at the cost of considerable suffering to her, the Court held that the interests of the foetus and its mother overlapped. Accordingly, it examined the protection available to the applicant from the angle of the adequacy of the mechanisms in place for proving the doctor's negligence in the loss of her child *in utero* and obtaining redress for the forced termination of her pregnancy. As the case concerned an involuntary infringement of her right to physical integrity, the positive obligation in procedural matters which derived from Article 2 did not necessarily require a criminal-law remedy. The applicant could have brought an action for damages against the authorities on account of the doctor's negligence. Such an action would have had good prospects of success and the applicant would have been able to obtain an order obliging the hospital to pay damages. That was clear from the findings of the expert reports drawn up as part of the criminal proceedings, which had indicated malfunctioning of the hospital department concerned and gross negligence by the doctor. Furthermore, in the circumstances of the case, the four-year limitation period applicable to actions for damages before the administrative courts did not, in the Court's opinion, appear unduly short, although it had recently been extended to ten years by legislation. Consequently, even assuming that Article 2 of the Convention was applicable in the instant case, the action for damages against the authorities on account of the doctor's alleged negligence could be viewed as an effective remedy available to the applicant.

Kopecký v. Slovakia

Judgment of 28 September 2004

Alleged violation of: Article 1 of Protocol No. 1 (protection of property)

Principal facts and complaints

In 1959 the applicant's father was convicted of keeping gold and silver coins contrary to the regulations in force. He was sentenced to one year's imprisonment and the coins were confiscated. In April 1992, the judgment was quashed and the applicant claimed the restitution of his father's coins under the Extra-Judicial Rehabilitations Act of 1991.

On 19 September 1995, the Senica District Court found that it was practically impossible for the applicant to fulfil the condition under the 1991 Act to show where the movable property in question had been on 1 April 1991, when the 1991 Act became operative. The court ordered the Ministry of the Interior to restore the coins to the applicant. The Ministry appealed, however, arguing that all relevant documents had been destroyed and that the onus of proof concerning the location of the coins was on the applicant.

On 29 January 1997, Bratislava Regional Court dismissed the applicant's action, finding that the applicant had failed to fulfil the obligation under the 1991 Act to indicate the precise location of the property. The Supreme Court upheld this decision. Both courts held that the evidence submitted did not constitute sufficient proof that in 1991 the Ministry of the Interior still possessed the confiscated coins.

The case was examined by the Court. In a Chamber judgment of 7 January 2003, the Court held that there had been a violation of Article 1 of Protocol No. 1 and awarded the applicant 13 323 euros. It attached particular importance to the fact that the evidence submitted by the applicant comprised a detailed inventory of the coins and an official record indicating when they had been deposited with the Ministry of the Interior, which had failed to provide any plausible explanation as to why the coins were no longer in its possession. The Court observed that the applicant was unable, for reasons which were imputable to public authorities, to trace the coins after they had been deposited with the Ministry of the Interior. As a result, he was deprived of any possibility of complying with the obligation to show where the coins had been at the time when the 1991 Act became operative. The case was referred to the Grand Chamber upon request of the Slovakian Government.

Decision of the Court

The Court observed that the principal question in the case was to decide whether

there was a sufficient basis in domestic law, as interpreted by the domestic courts, for the applicant's claim to qualify as an "asset" for the purposes of Article 1 of Protocol No. 1. In that respect the only point in dispute was whether the applicant could be said to have satisfied the requirement that he show "where the property [was]" as laid down in the 1991 Act.

Having regard to the information before it and considering that it had only limited power to deal with alleged errors of fact or law committed by the national courts, to which it fell in the first place to interpret and apply domestic law, the Court found no appearance of arbitrariness in the way in which Bratislava Regional Court and the Supreme Court determined the applicant's claim. There was therefore no basis on which the Court could reach a different conclusion on the applicant's compliance with the requirement in issue.

The Court accepted that, in the light of the wording of the relevant provisions of the 1991 Act and in the particular circumstances of the case, the applicant might not have known for certain whether or not he had fulfilled the above condition for obtaining restitution. However, this difference was not decisive for determining the point in question. In particular, the Court noted that the applicant's restitution claim was a conditional one from the outset and that the question whether or not he complied with the statutory requirements was to be determined in the ensuing judicial proceedings. The Slovakian courts ultimately found that that was not the case. The Court was therefore not satisfied that, when the applicant filed his restitution claim, it could be said to have been sufficiently established to qualify as an "asset" attracting the protection of Article 1 of Protocol No. 1.

Although the Senica District Court had found that it was practically impossible for the applicant to fulfil the condition concerning the precise location of the property and ordered the coins to be restored to him, its judgment was subsequently overturned and was therefore not sufficient to generate a proprietary interest amounting to an "asset".

The Court therefore found that, in the context of his restitution claim, the applicant had no "possessions" within the meaning of Article 1 of Protocol No. 1.

Edwards and Lewis v. the United Kingdom

Judgment of 27 October 2004

Alleged violation of: Article 6 § 1 (right to a fair trial)

Principal facts and complaints

On 9 August 1994, following a surveillance and undercover operation, Mr Edwards was arrested in a van in the company of an undercover police officer. In the van was a briefcase containing 4.83 kilograms of 50% pure heroin. On 7 April 1995 he was convicted of possessing a Class A drug with intent to supply and sentenced to nine years' imprisonment. He appealed unsuccessfully.

On 25 July 1995 Mr Lewis was arrested by uniformed police officers in the car park of a public house after he had shown two undercover police officers some counterfeit bank notes. More counterfeit notes were found when his house was searched. On 12 November 1996 he pleaded guilty to three charges of possession of counterfeit currency notes with the intention of delivering them to another. He was sentenced to four-and-a-half years' imprisonment.

In both cases an application by the prosecution to withhold material evidence had been granted on the ground that it would not assist the defence and there were genuine public-interest reasons for not disclosing it. The judge had also refused a request to exclude the evidence of the undercover officers.

In a Chamber judgment of 22 July 2003 the Court reasoned that the procedure followed to determine the issues of disclosure of evidence and entrapment had not complied with the requirements to provide adversarial proceedings and equality of arms and had not incorporated adequate safeguards to protect the interests of the accused. It held that there had been a violation of Article 6 § 1 and that the finding of a violation constituted in itself just satisfaction for any non-pecuniary damage sustained. The case was referred to the Grand Chamber upon request of the United Kingdom Government.

The applicants alleged that they had been denied fair trials, contrary to Article 6 of the Convention, as a result of incitement to commit offences by *agents provocateurs* and the procedure followed by the domestic courts concerning the non-disclosure of evidence.

Decision of the Court

The United Kingdom Government informed the Court that it no longer wished to pursue the referral of the case to the Grand Chamber and confirmed that it was content for the Grand Chamber simply to endorse the Court's Chamber judgment. The applicants had accepted the Chamber's judgment and did not object to the procedure proposed by the Government.

Having examined the issues raised by the case in the light of the Chamber's judgment, the Grand Chamber saw no reason to depart from the Chamber's findings. It therefore concluded that there had been a violation of Article 6 § 1, for the reasons elaborated by the Chamber.

Selected chamber judgments of the Court

Santoro v. Italy

Judgment of 1 July 2004

Alleged violations of: Articles 3 of Protocol No. 1 (right to free elections) and 2 of Protocol No. 4 (freedom of movement)

Principal facts and complaints

The applicant, against whom a number of criminal complaints had been lodged in relation to his involvement in cases of stolen goods, was placed under police supervision of one year in May 1994. The order imposing this preventive measure was served on him in May 1994. However, it was not until over a year later, in July 1995, that the police drafted a document setting out the concrete obligations and movement restrictions which the applicant had to comply with during the preventive measure. As one year had already passed since the order had been served on him, the applicant requested the courts for a declaration that the preventive measure had expired. The District Court, and subsequently the Court of Appeal, considered that the order had not ceased to apply since its implementation had only started in July 1995 (when the police had drafted the document with specific obligations for the applicant). On the contrary, the Court of Cassation found that the period of special supervision had begun to run on the date when the order had been served on the applicant, and, consequently, that the special supervision had ceased to apply in May 1995. As a result of the imposition of the special supervision order, the applicant had been taken off the electoral register in January 1995, which had prevented him from taking part in elections for the Regional Council and for the national Parliament.

The applicant complained that he was prevented from voting and that the preventative measures were prolonged illegally.

Decision of the Court

The Court found it hard to understand why there had been a delay of more than one year in drafting the obligations which arose from an order which was immediately enforceable and concerned the applicant's fundamental right of freedom of movement between the date the order imposing the preventive measures was served on the applicant and the date the document specifying the obligations was drafted. Although the Court of Cassation had declared that the order had ceased to apply in May 1995, it had not provided the applicant with any redress for the damages he had suffered as a result of the unlawful prolongation of the special supervision order. In such circumstances, the interference with the applicant's liberty of movement after May 1995 had not been "in accordance with law" or "necessary".

Concerning Article 3 of Protocol No. 3, given the delay of more than nine months between the date the order was imposed and the applicant's actual disenfranchisement by the Electoral Committee – for which no explanation had been provided by the Government – the applicant had been adversely affected in his right to vote in both such elections. Had the disenfranchisement been applied in due time and for the statutory period of one year, the measure would have ceased before the holding of such elections. The Court therefore concluded that there had been a violation of the Article.

The Court awarded the applicant 2 000 euros for non-pecuniary damage and certain sums for costs and expenses.

Pla and Puncernau v. Andorra
Judgment of 13 July 2004

Alleged violations of: Article 8 (right to respect for private and family life) and 14 (prohibition of discrimination) taken in conjunction with Article 8

Principal facts and complaints

The applicants' respective adoptive father (deceased) and husband was the beneficiary of his mother's will and heir to her property. In that will, dated 1939, the mother had stipulated that her son and heir was to pass on his inheritance to a "child or grandchild from a legitimate and canonical marriage". If those conditions were not met, the estate was to pass to other descendants. In 1969 the beneficiary of the will contracted a canonical marriage with the second applicant and they adopted the first applicant, Antoni, assuming full parental responsibility. In 1995, by an act done in private, the first applicant's adoptive father bequeathed to him the property he had inherited, the life-interest being awarded to his wife. The estate passed to the heirs in November 1996. Taking the view that, as an adopted child, the applicant could not benefit from the will drawn up by the testator in 1939, two of the latter's great-granddaughters – who were also potential beneficiaries – brought civil proceedings. Their action sought primarily to have declared void and without effect the private document of July 1995 and to obtain an order to the effect that the applicants were to hand over to them all the assets making up their great-grandmother's estate. The court of first instance dismissed the action. It considered that the testator's wishes were to be inferred from the words used in the will. In the light of that circumstance and of the conditions in force when those wishes were expressed, the court concluded that the testator had not intended to exclude adopted or non-biological children from her estate, since, had that been her intention, she would have expressly stated it. Accordingly, the private document of 1995 was consistent with the will dictated in 1939. In May 2000 the High Court of Justice quashed the impugned judgement. It decided to interpret the testator's wishes. Basing its assessment on various factors in force at the time when the testator was alive, the High Court ruled that she had not wished to include adopted children as beneficiaries of the estate. Accordingly, the High Court cancelled the 1995 private document, declared that the great-granddaughters were the legitimate heirs of their great-grandmother's estate and ordered the applicants to restore the assets in question. Further appeals by the applicants were also dismissed.

The applicants complained that the court decisions finding that Antoni could not inherit his grandmother's estate were discriminatory. They relied on Article 8 and Article 14 of the Convention.

Decision of the Court

Applicability of Article 14 in conjunction with Article 8 (preliminary objection)

Inheritance rights between grandchildren and grandparents fell within the category of "family life", even if the testator had died before her grandson's adoption.

Concerning the alleged violation of the Article

The Court recalled that the national courts were better placed than an international court to evaluate, in the light of local legal traditions, the particular context of the legal dispute submitted to them – especially when interpreting an eminently private instrument such as a clause in a person's will – and the various competing rights and interests. Accordingly, an issue of interference with private and family life could only arise under the Convention if the national courts' assessment of the facts or domestic law were manifestly unreasonable or arbitrary or blatantly inconsistent with the fundamental principles of the Convention.

The Court observed that the legitimate and canonical nature of the marriage between Antoni's father and mother was indisputable. Also, there was nothing in Ms Pujol Oller's will to suggest that "son" meant only biological sons or that she intended to exclude adopted grandsons. The Court understood that she could have done so, but as she did not, the only possible and logical conclusion was that that was not her intention.

The High Court of Justice's interpretation, that by not expressly stating that she was not excluding adopted sons Ms Pujol Oller meant that she did intend to exclude them, appeared over contrived and contrary to the general legal principle that, where a statement was unambiguous, there was no need to examine the intention of the person who made it.

Admittedly, the Court was not in theory required to settle disputes of a purely private nature. That being said, in exercising its European supervisory role, the Court could not remain passive where a national court's interpretation of a legal act appeared unreasonable, arbitrary or, as in the applicants' case, blatantly inconsistent with the prohibition of discrimination established by Article 14 and more broadly with the principles underlying the Convention.

The High Court of Justice's interpretation of the clause in question had the effect of depriving Antoni of his right to inherit under his grandmother's estate and Roser of her right to the life tenancy of the estate assets left her by her late husband. Since the testamentary disposition, as worded by Ms Pujol Oller, made no distinction between biological and adopted children it was not necessary to interpret it in that way. Such an interpretation therefore amounted to the judicial deprivation of an adopted child's inheritance rights.

The Court did not discern any legitimate aim pursued by the decision in question or any objective and reasonable justification on which the distinction made by the domestic court might be based. In the Court's view, an adopted child was in the same legal position as a biological child of his or her parents in all respects. The Court had stated on many occasions that very weighty reasons needed to be put forward before a difference in treatment on the ground of birth out-of-wedlock could be regarded as compatible with the Convention.

The Court reiterated that the Convention was a living instrument, to be interpreted in the light of present-day conditions and that great importance was currently attached in the member states of the Council of Europe to the question of equality between children born in and out of wedlock regarding their civil rights. Thus, even supposing that the clause in question did require an interpretation by the domestic courts, that interpretation could not be made exclusively in the light of the social conditions existing when the will was made or at the time of Ms Pujol Oller's death, namely in 1939 and 1949, particularly where a period of 57 years had elapsed between the date when the will was made and the date on which the estate passed to the heirs. Where such a long period had elapsed, during which profound social, economic and legal changes had occurred, the courts could not ignore those new realities. The same was true with regard to wills: any interpretation, if an interpretation was necessary, should aim to ascertain the testator's intention and render the will effective, while bearing in mind that the testator could not be presumed to have meant what he or she did not say and without overlooking the importance of interpreting the clauses in the will in the manner that most closely corresponded to domestic law and to the Convention as interpreted in the European Court of Human Rights' case law.

The Court therefore found that there has been a violation of Article 14 read in conjunction with Article 8. It further held that there was no need to examine the application separately under Article 8.

The Court reserved the question of the application of Article 41 (just satisfaction).

[The referral of this case to the Grand Chamber was requested.]

Sidabras and Džiautas v. Lithuania

Judgment of 27 July 2004

Alleged violations of: Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life) and Article 10 (freedom of expression) taken alone or in conjunction with Article 14

Principal facts and complaints

The applicants, Lithuanian nationals, had both worked for the Lithuanian branch of the KGB, Mr Sidabras from 1975 to 1986 and Mr Džiautas from 1985 to 1991. After Lithuania declared its independence in 1990, Mr Sidabras worked as a tax inspector with the Inland Revenue. From 1991 Mr Džiautas worked as a prosecutor at the Office of the Prosecutor General of Lithuania, investigating organised crime and corruption cases in particular. In May 1999, the applicants were found to have the status of "former KGB officers" and to be subject to the employment restrictions imposed by Article 2 of the Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Permanent Employees of the Organisation, adopted on 16 July 1998, which entered into force on 1 January 1999 (the 1999 Act). As a result of these restrictions, both applicants were dismissed from their posts and banned from applying for public-sector and various private-sector posts from 1999 to 2009.

They both brought an administrative action pleading that their dismissal was unlawful. Mr Sidabras claimed that he had only been engaged in counter-intelligence and ideology while working at the KGB. Mr Džiautas claimed that, from 1985 to 1990, he had only studied at a special KGB school in Moscow and that, in 1990-1991, he had worked at the KGB as an informer for the Lithuanian security intelligence authorities and that he should therefore be entitled to benefit from the exceptions allowed under the 1999 Act.

On 9 September 1999, the Higher Administrative Court held that Mr Sidabras's dismissal had been justified. His appeals against that decision failed. On 6 August 1999, the Higher Administrative Court granted Mr Džiautas's claim and reinstated him. However, on 25 October 1999, on an appeal by the security intelligence authorities, this judgment was quashed by the Court of Appeal. Mr Džiautas appealed unsuccessfully to the Supreme Court.

The applicants complained that being banned from finding employment in the private sector from 1999-2009 on the ground that they had been former KGB officers was in breach of Articles 8 and 14. They also complained, under Articles 10 and 14, about the employment restrictions imposed on them and their dismissals. In particular, the applicants stressed that they left the KGB many years before the entry into force of the 1999 Act. Mr Sidabras contended that he had since been actively involved in various activities promoting the independence of Lithuania and Mr Džiautas, that he was decorated for his work in investigating various offences, including crimes against the State. They further submitted that, as a result of the negative publicity surrounding the adoption of the so-called "KGB Act", and its application to them, they had been subjected to daily embarrassment on account of their past.

Decision of the Court

Article 14 taken in conjunction with Article 8

Applicability

The Court observed that the applicants were treated differently from other people in Lithuania who had not worked for the KGB, and who as a result had no restrictions imposed on them in their choice of professional activities or in relation to their employment prospects on the ground of their loyalty or lack of loyalty to the State.

It noted that the ban on the applicants' engaging in professional activities in various private-sector spheres until 2009 had affected their ability to develop relationships with the outside world to a very significant degree, which had created serious difficulties for them in relation to earning their living, with obvious repercussions on their enjoyment of their private lives. Following the publicity surrounding the adoption of the Act and its application to them, they had also been subjected to daily embarrassment as a result of their past activities. The Court accepted that the applicants continued to labour under the status of "former KGB officers" and that fact might of itself be considered an impediment to the establishment of contacts with the outside world. That situation undoubtedly affected both their reputation and the enjoyment of their "private life". They were effectively marked in the eyes of society on account of their past association with an oppressive regime.

The Court therefore considered that the impugned ban affected, to a significant degree, the possibility for the applicants to pursue various professional activities and that there were consequential effects on the enjoyment of their right to respect for their "private life" within the meaning of Article 8. It followed that Article 14 was applicable in the circumstances of this case taken in conjunction with Article 8.

Compliance

The Court noted that the Act was intended to ensure the proper functioning of national security and of the educational and financial systems and that the reason for the imposition of employment restrictions was not the applicants' KGB history as such, but their lack of loyalty to the State.

The Court accepted that activities of the KGB were contrary to the principles guaranteed by the Lithuanian Constitution or indeed by the European Convention on Human Rights. Lithuania wished to avoid a repetition of its previous experience by founding its State, among other things, on the belief that it should be a democracy capable of defending itself. It had to be noted also that similar systems had been established in a number of other States which had ratified the Convention, which had successfully emerged from totalitarian rule.

The Court therefore accepted that the restriction of the applicants' employment prospects under the 1999 Act, and hence the difference of treatment applied to them, pursued the legitimate aims of the protection of national security, public order, the economic well-being of the country and the rights and freedoms of others.

However, the Court noted that the applicants' employment prospects were restricted not only in the State sector, but also in various spheres of the private sector. The Court reiterated that the requirement of an employee's loyalty to the State was an inherent condition of employment with State authorities responsible for protecting and securing the general interest. However, such a requirement was not inevitably the case for employment with private companies. Although the economic activities of private-sector actors undoubtedly affected and contributed to the functioning of the State, they were not depositaries of the sovereign power vested in the State. Moreover, private companies might legitimately engage in activities, notably financial and economic, which competed with the goals fixed for public authorities or State-run companies.

For the Court, State-imposed restrictions on the possibility for a person to find employment with a private company for reasons of lack of loyalty to the State could not be justified from the Convention point of view in the same manner as restrictions governing access to their employment in the public service, regardless of the private company's importance to the State's economic, political or security interests.

Furthermore, the Court could not overlook the ambiguous manner in which the Act dealt with, on the one hand, the question of the applicants' lack of loyalty and, on the other hand, the need to apply the restrictions to employment in certain private-sector jobs. With the exception of references to "lawyers" and "notaries", the Act contained no definition of the specific jobs, functions or tasks which the applicants were barred from holding. The result was that it was impossible to ascertain any reasonable link between the positions concerned and the legitimate aims sought by the ban on holding those positions. In the Court's view, such a legislative scheme had to be considered to lack the necessary safeguards for avoiding discrimination and for guaranteeing an adequate and appropriate judicial control of the imposition of such restrictions.

The Court also considered relevant the fact that the 1999 Act came into effect

almost a decade after Lithuania had declared its independence, as a result of which the restrictions on the applicants' professional activities were imposed on them 13 years (Sidabras) and 9 years (Džiautas) after their departure from the KGB.

The Court concluded that the ban on the applicants seeking employment in various private-sector spheres constituted a disproportionate measure, even having regard to the legitimacy of the aims pursued by that ban. The Court therefore held that there had been a violation of Article 14 taken in conjunction with Article 8.

Article 8

In view of its finding of a violation of Article 14 taken in conjunction with Article 8, the Court held that it was not necessary to consider whether there had been a violation of Article 8 taken on its own.

Articles 10 and 14

The Court did not find that the application of the employment restrictions to the applicants under the Act encroached upon their right to freedom of expression. It followed that Article 10 was not applicable. Finding, therefore, that there was no scope for the application of Article 14 in conjunction with Article 10, the Court held that there had been no violation of Article 10, taken alone or in conjunction with Article 14.

The Court awarded each of the applicants 7 000 euros in respect of pecuniary and non-pecuniary damage, and certain sums for costs and expenses.

Slimani v. France

Judgment of 27 July 2004

Alleged violations of: Articles 2 (right to life), and 3 (prohibition of inhuman or degrading treatment), and Article 13 (right to an effective remedy) taken together with Articles 2 or 3

Principal facts and complaints

Mr Sliti, the applicant's partner and father of her two children, was a Tunisian national living in France. In execution of an order permanently excluding him from French territory, he was held in the Marseilles-Arenc Detention Centre pending deportation. He had previously been treated in psychiatric establishments and followed heavy medical treatment. Due to the absence of a medical permanence, medicine was distributed by the policemen supervising the detention centre. On the fourth day of his detention, Mr Slimani refused to take his medicine. Despite his state of over-excitement, he was not examined by a doctor, as the detention centre had no medical installations and staff. After he felt faint and fell into a coma, he was seen by marine firemen called in, and transferred to a hospital on the same day where he died shortly afterwards. An inquiry was commenced pursuant to Article 74 of the Code of Criminal Procedure in order to "establish the cause of death". The applicant was refused permission to take part in the inquiry. She applied to the investigating judge and subsequently to the president of the indictment division for an order requiring the inquiry papers be sent to the public prosecutor with a view to the scope of the inquiry being enlarged to include voluntary homicide. Her application was dismissed, notably on the ground that "she did not have standing to request investigative steps in an inquiry into the cause of death".

The inquiry established that Mr Sliti had died of cardiac arrest induced by acute pulmonary oedema after an epileptic attack that may have been brought on by his refusal to take his usual medication. It also concluded that the treatment administered at the detention centre by the Emergency Medical Service and subsequently at the hospital was consistent with "current scientific knowledge". The public prosecutor decided to take no further action in the matter.

Relying on Article 2 of the Convention, the applicant maintained that her partner had died as a result of serious failings on the part of the authorities. Under Article 3, she complained of the conditions in which he had been held in the detention centre. She also complained that she had not been permitted to take part in the inquiry into the cause of death and, under Article 13, of the inadequate nature of that inquiry.

Decision of the Court

Mr Sliti's death and the conditions in which he was detained

The French Government submitted that the Court had no jurisdiction to hear the applicant's complaints, as she had not used either of the two remedies – the one criminal, the other administrative – that had been available to her in the French courts.

The Court noted that under French law Ms Slimani could have lodged a complaint for homicide with the relevant investigating judge and applied to be joined to the proceedings as a civil party. Such a complaint would have set the criminal proceedings in motion and compelled the investigating judge to consider the case. It could have led to the case being referred to the criminal courts. If an order was made not to proceed with the case, it would have been open to the applicant, like anyone who considered that they had been a victim of administrative failings, to claim compensation in the administrative courts for the loss caused by the offence.

The applicant had an accessible remedy under French law that was capable of affording her redress for her complaints under Articles 2 and 3 and provided reasonable prospects of success. Accordingly, she should have used that remedy before applying to the Court. Consequently, the Court had no jurisdiction to examine the merits of the complaints concerning the alleged responsibility of the authorities for Mr Sliti's death or the conditions in which he had been held at the Marseilles-Arenc Detention Centre.

Owing to the close relationship between Article 13 and Article 35 § 1 of the Convention, the Court held that there had been no violation of Article13, taken together with Article 2 or Article 3, of the Convention.

Conduct of the investigation

Although an inquiry to establish the cause of death was commenced by the authorities of their own motion on the day Mr Sliti died, the applicant was excluded from it: she did not have access to the file, was unable to play any part in the proceedings and was not even informed of the decision to take no further action.

The Court reiterated that when a person in detention dies in suspicious circumstances, Article 2 requires the authorities to conduct effective official inquiries of their own motion as soon as the case comes to their attention to enable the cause of death to be established, and anyone responsible for the death to be identified and punished. To require, as the French Government did, the deceased's relatives to lodge a complaint with an application to be joined as civil parties if they wish to be involved in the inquiry contravened those principles. As soon as they became aware of a death in suspicious circumstances, the authorities were required to hold an inquiry of their own motion and automatically associate the deceased's relatives with it.

Compliance with Article 2 of the Convention would have required permitting Ms Slimani to take part in the inquiry into the cause of Mr Sliti's death without having to lodge a criminal complaint beforehand. Since that did not happen, the Court found that the inquiry by the French authorities was not effective and held that there had been a procedural violation of Article 2.

In view of that finding, the Court did not need to examine whether the inquiry satisfied the requirements of Article 3 of the Convention.

The Court awarded the applicant 20 000 euros for non-pecuniary damage and certain sums for costs and expenses.

San Leonard Band Club v. Malta

Judgment of 29 July 2004

Alleged violation of: Article 6 § 1 (right to a fair hearing before an independent and impartial tribunal)

Principal facts and complaints

The applicant company occupied premises in a tenement. In 1986, the Housing Secretary issued a requisition order which protected the applicant's occupancy. The owners of the tenement brought civil proceedings against the Housing Secretary and the applicant, which were rejected in first instance but subsequently granted by the Court of Appeal. The requisition order

was thus annulled and the owners were reinstated in the possession of the premises. Following the Court of Appeal judgment, the applicant company requested a retrial on the basis of an alleged misinterpretation of the law. At the time of filing its submissions, the applicant in addition requested that the judges of the Court of Appeal abstain from the case, as they were the same judges who had composed the bench which delivered the impugned judgment. The applicant's plea challenging the judges was rejected, as was, subsequently, the request for a new trial. The Constitutional Court recalled that retrial was not a third instance procedure and that the court which had pronounced the judgment was in the best position to identify any mistakes which might have been committed. It also found that there were reasons to believe that the applicant's request for a retrial was an attempt to prolong the proceedings in order to delay the release of the premises.

The company complained under Article 6 § 1 that its request for retrial was not heard by an impartial tribunal, because the same three judges who had heard the merits of the case and adopted the judgment of 30 December 1993 were on the bench dealing with the retrial request.

Decision of the Court

As there was no third instance in the Maltese legal system such as a Court of Cassation, the sole possibility for a person dissatisfied with an appeal judgment was to apply for a "new trial" procedure. The ground invoked by the applicant for a "new trial" had been "wrong application of the law", which was in substance similar to an appeal on points of law before a Court of Cassation, a remedy to which Article 6 has constantly been held to be applicable. Had the applicant's plea that the law had been wrongly applied been accepted, the impugned judgment would have been quashed. Thus, the outcome of the new trial procedure would have been decisive for the applicant's "civil rights and obligations" and Article 6 § 1 was therefore applicable. As regards the subjective test for assessing whether the Court of Appeal was an impartial tribunal within the meaning of Article 6 § 1, nothing showed that the judges composing the court had any personal prejudice. As to the objective test, the Court of Appeal judges were essentially called upon to decide whether or not they themselves had committed an error of legal interpretation or application in their previous judgment, being in fact requested to judge themselves on their own ability to apply the law. Such circumstances were sufficient to hold the applicant's fears as to the lack of impartiality of the Court of Appeal to be objectively justified.

H.L. v. the United Kingdom

Judgment of 5 October 2004

Alleged violation of: Article 5 § 1 (right to liberty and security) and § 4 (right to have legality of detention reviewed by a court)

Principal facts and complaints

Autistic, the applicant is unable to speak and his level of understanding is limited. He is frequently agitated and has a history of self-harming behaviour. He lacks the capacity to consent or object to medical treatment.

For over 30 years he was cared for in Bournewood Hospital, a National Health Service Trust hospital. He was an in-patient at the hospital's Intensive Behavioural Unit (IBU) from 1987 until March 1994, when he was discharged on a trial basis to paid carers, with whom he successfully resided until 22 July 1997. In 1995 he started attending a day-care centre on a weekly basis.

On 22 July 1997, while at the day-centre, he became particularly agitated, hitting himself on the head with his fists and banging his head against the wall. Staff could not contact his carers, so called a local doctor, who gave him a sedative. The applicant remained agitated and, on the recommendation of his social worker, was taken to hospital. A consultant psychiatrist diagnosed him as requiring in-patient treatment. With the help of two nurses, he was transferred to the hospital's IBU as an "informal patient".

Dr M., the medical officer responsible for H.L. since 1977, considered detaining him compulsorily under the Mental Health Act 1983, but concluded that it was not necessary, as H.L. was compliant and had not resisted admission or tried to run away.

In or around September 1997 the applicant sought leave to apply for judicial review of the hospital's decision to admit him. The High Court rejected his application, finding that he had not been "detained" but had been informally admitted in accordance with the common law doctrine of necessity. The applicant appealed.

Following an indication from the Court of Appeal (on 29 October 1997) that the appeal would be decided in the applicant's favour, H.L. was admitted for treatment in the hospital as an involuntary patient under the 1983 Act.

The Court of Appeal found that the applicant had been "detained" in July 1997 and that, as a patient could only be lawfully detained for the treatment of a mental disorder under the 1983 Act, he had been unlawfully detained. The relevant health-care authorities appealed.

The applicant had applied, in the meantime, to the Mental Health Review Tribunal for a review of his detention. An independent psychiatric report was prepared, recommending his discharge. He was released from the hospital on 5 December 1997 and officially discharged to his carers on 12 December 1997.

On 25 June 1998 the House of Lords ruled, by a majority, that the applicant had not been detained and that he had been lawfully admitted as an informal patient on the basis of the common law doctrine of necessity.

The applicant mainly alleged that his treatment as an informal patient in a psychiatric institution amounted to detention and that this detention was unlawful, in violation of Article 5 § 1 (right to liberty and security), and that the procedures available to him for a review of the legality of his detention did not satisfy the requirements of Article 5 § 4. In addition, relying on Article 14 (prohibition of discrimination), he alleged that he was discriminated against as an "informal patient".

Decision of the Court

Article 5 § 1

Was the applicant detained?

The Court observed that, between 22 July and 29 October 1997, the applicant was under continuous supervision and control and was not free to leave. It made no difference whether the ward in which he was being treated was locked or lockable. The Court therefore concluded that the applicant was "deprived of his liberty", within the meaning of Article 5 § 1, during this period.

Was his detention lawful?

The Court noted that it was not disputed that the applicant was suffering from a mental disorder on 22 July 1997, that he was agitated, self-harming and controllable with sedation only while in the day-care centre or that he had given rise to an emergency situation on that day. Having regard to the detailed consideration of the matter by Dr M. (who had cared for the applicant since 1977) and by the other health care professionals on that day, together with the day-care centre's report, the Court considered there was adequate evidence justifying the initial decision to detain the applicant on 22 July 1997.

The Court further found that the applicant had been reliably shown to have been suffering from a mental disorder of a kind or degree warranting compulsory confinement which persisted during his detention between 22 July and 5 December 1997.

In determining whether the applicant's detention was lawful, the Court considered it clear that the domestic legal basis for the applicant's detention between 22 July and 29 October 1997 was the common law doctrine of necessity. This doctrine, in particular the test of what was in the applicant's best interests, was still developing at the time of the applicant's detention.

Whether or not the applicant, with appropriate advice, could reasonably have forseen his detention, the Court found that a further requirement for lawfulness under Article 5 § 1, namely that any deprivation of liberty should not be arbitrary, had not been met.

The Court found striking the lack of any fixed procedural rules by which the admission and detention of compliant incapacitated patients was conducted. The contrast between this dearth of regulation and the extensive network of safeguards applicable to psychiatric committals covered by the 1983 Act was, in the Court's view, significant.

In particular and most obviously, the Court noted the lack of any formalised admission procedures indicating who could propose admission, for what reasons and on the basis of what kind of medical and other assessments and conclusions. There was no requirement to fix the exact purpose of admission (for example, for assessment or for treatment) and, consistently, no limits in terms of time, treatment or care attached to that admission. Nor was there any specific provision requiring a continuing clinical assessment of the persistence of a disorder warranting detention. The nomination of a representative of a patient who could make certain objections and applications on his or her behalf was a procedural protection accorded to those committed involuntarily under the 1983 Act and which would be of equal importance for legally incapacitated patients with, as in the applicant's case, extremely limited communication abilities.

As a result of the lack of procedural regulation and limits, the Court observed that the hospital's health care professionals assumed full control of the liberty and treatment of a vulnerable incapacitated individual solely on the basis of their own clinical assessments completed as and when they considered fit. While the Court did not question the good faith of those professionals or that they acted in what they considered to be the applicant's best interests, the very purpose of procedural safeguards was to protect individuals against any misjudgement or professional lapse.

The Court therefore found that this absence of procedural safeguards failed to protect against arbitrary deprivations of liberty on grounds of necessity and, consequently, to comply with the essential purpose of Article 5 § 1. It therefore held that there had been a violation of Article 5 § 1.

Article 5 § 4

Finding that it had not been demonstrated that the applicant had available to him a procedure to have the lawfulness of his detention reviewed by a court, the Court held that there had been a violation of Article 5 § 4.

Article 14

The Court considered that the applicant's complaint that he was discriminated against as an informal patient did not give rise to any separate issue not already examined under Article 5 §§ 1 and 4.

The Court held that the finding of these violations constituted sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. It awarded the applicant certain sums for costs and expenses.

Kjartan Asmundsson v. Iceland
Judgment of 12 October 2004

Alleged violation of: Article 1 of Protocol No. 1 (protection of property), taken alone and in conjunction with Article 14 (prohibition of discrimination)

Principal facts and complaints

In 1978 the applicant had a serious accident on board a trawler and had to give up work as a seaman. His disability was assessed at 100%, which made him eligible for a disability pension from the Seamen's Pension Fund ("the Pension Fund") on the ground that he was unable to carry out the work he had performed before his disability.

After his accident he joined a transport company as an office assistant, and is still employed there as head of the claims department.

In 1992, new legislation changed the way the applicant's disability was assessed for the purposes of his pension, so that it was to be based not on his inability to perform the same work, but work in general. The new provisions had been enacted in relation to the Pension Fund's financial difficulties.

Under the new rules, the applicant's disability was re-assessed and his loss of capacity for work in general was found to be 25%; below the minimum level of 35 %. As a consequence, from 1 July 1997 onwards the Pension Fund stopped paying his disability pension and related child benefits which he had been receiving for nearly 20 years. Overall, he lost pension rights (disability and children's annuity benefits) mounting to 12,637,600 Icelandic krónur.

The applicant complained of the decision to discontinue payment of his invalidity pension.

Decision of the Court

The Court was struck by the fact that the applicant was one of 54 people whose disability pensions were discontinued altogether on 1 July 1997. Legitimate concerns about the need to resolve the Fund's financial difficulties seemed hard to reconcile with the fact that after 1 July 1997 the vast majority of the 689 disability pensioners continued to receive disability benefits at the same level as before the adoption of the new rules, whereas only a small minority of disability pensioners had to bear the most drastic measures of all, namely the total loss of their pension entitlements. In the Court's view, although changes made to pension entitlements might legitimately take into account the pension holders' needs, the above differential treatment in itself suggested that the impugned measure was unjustified for the purposes of Article 14.

The discriminatory character of the interference was compounded by the fact that it affected the applicant in a particularly concrete and harsh manner in that it totally deprived him of the disability pension he had been receiving on a regular basis for nearly 20 years and which, at the time, constituted one third of his gross monthly income.

In the Court's view, the applicant could validly plead an individual legitimate expectation that his disability would continue to be assessed on the basis of his incapacity to perform his previous job. And regard should be had to the fact that, under the former rules, gainful employment was not incompatible with a Fund member's receipt of a full disability pension, provided that that pension did not exceed the member's loss of income.

It was significant that the applicant lost his pension on 1 July 1997, not in relation to a change in his personal circumstances but following changes in the law altering the criteria for disability assessment. Although he was still considered 25% incapacitated to perform work in general, he was deprived of the entirety of his disability pension entitlements.

Against that background, the Court found that the applicant was made to bear an excessive and disproportionate burden which could not be justified by the legitimate community interests relied on by the authorities. It would have been otherwise had the applicant been obliged to endure a reasonable and commensurate reduction rather than the total deprivation of his entitlements. Accordingly the Court held that there had there had been a violation of Article 1 of Protocol No. 1.

The Court also held that no separate issue arose under Article 14.

The Court awarded the applicant 75 000 euros in respect of pecuniary damage, 1 500 euros in respect of non-pecuniary damage and certain sums for costs and expenses.

AB Kurt Kellerman v. Sweden
Judgment of 26 October 2004

Alleged violation of: Article 6 § 1 (right to a fair trial)

Principal facts and complaints

The applicant is a Swedish limited liability company, AB Kurt Kellermann, involved in the Swedish textile industry. It was declared bankrupt on 17 June 1998 and dissolved on 30 March 2001.

The company was not a member of any employers' association. Thus, it was not automatically bound by any collective bargaining agreement. It had about twenty employees, two of whom were members of the Industrial Union (*Industrifacket*), an affiliated member of the Swedish Trade Union Confederation (*Landsorganisationen*).

In the spring of 1997 the Industrial Union requested negotiations with the applicant company with a view to concluding a collective agreement. Such negotiations did not succeed. AB Kurt Kellermann stated that the salaries it paid were higher than the minimum wage stipulated in the collective agreement proposed by the union. On 3 October 1997 the union took action by ordering the cessation of all work at the company and by imposing a "blockade" on the company.

On 17 October 1997 the applicant company instituted proceedings against the union, claiming that the threatened industrial action was unlawful. Later on, it claimed that the composition of the court which determined the case should have been restricted to professional judges – i.e. without members representing employers' and employees' interests. The claim was rejected and the Labour Court found in favour of the union.

On 23 February 1998 the union applied to the Labour Court for a declaratory judgment establishing the union's right to take immediate industrial action against the applicant company. The applicant company claimed, once again, that the Labour Court was not impartial; by a decision of 9 March 1998 the Labour Court rejected the applicant company's challenge. The composition of the Labour Court which heard and examined the union's claims was the same as for the judgment of 11 February 1998. It granted the union's request for an interim declaration that the proposed industrial action was lawful. The applicant company's request to the Supreme Court was refused.

Following a new supportive industrial action, AB Kurt Kellermann joined the Swedish Textile and Clothing Industries' Association and thus became bound by a collective agreement. The applicant company went into voluntary liquidation in June 1998.

The applicant company complained that that it did not have a fair hearing by an impartial tribunal .

Decision of the Court

The Court held that the impartiality of the Labour Court was not breached by the presence and the behaviour of the lay assessors who composed it.

The Committee of Ministers' actions under the European Convention on Human Rights

In accordance with Article 46 of the Convention, the Committee of Ministers supervises the execution of the Court's final judgments by ensuring that all the necessary measures are adopted by the respondent states in order to redress the consequences of the violation of the Convention for the victim and to prevent similar violations in the future.

The documentation for these meetings, in the form of the Annotated Agenda and Order of Business, are available to the public on the Internet site of the Committee of Ministers.

Given the great number of cases reviewed by the Committee of Ministers, only a selection of those appearing on the agendas of the 891st and 897th Human Rights (DH) meetings (July and September) is presented here. Further information is available from the Directorate General of Human Rights, on the Internet site of the Committee of Ministers and in the HUDOC database.

Committee of Ministers: http://wcm.coe.int/

HUDOC: http://hudoc.echr.coe.int/

Cases currently pending

France

Colombani and others v. France

Court judgment of 25 June 2002

The case concerns the conviction in 1998 of the daily newspaper *Le Monde*, its director and a journalist for having published an article about an official report prepared at the request of the Commission of the European Communities on drug production and trafficking in Morocco which implicated the King of Morocco's entourage. The French courts found the applicants guilty of insulting a foreign Head of State, under Section 36 of the Law of 29/07/1881 on the Freedom of the Press, and condemned the applicants to pay a fine and publish the details of the conviction. Unlike the provisions covering defamation in ordinary law, the offence covered by Section 36 of this law does not permit *exceptio veritatis* defence. The European Court therefore considered that, because of the special nature of the protection afforded by this provision, the existence of a misdemeanour of insulting foreign heads of state was liable to infringe freedom of expression without corresponding to a "pressing social need" sufficient to justify such a restriction.

With regard to individual measures, the applicants may request the re-opening of the proceedings before domestic courts.

Concerning general measures, the provision at issue in this case (Article 36 of the Law of 29/07/1881 on the Freedom of the Press) was repealed by a law of 09/03/2004. Before that, the judgment of the European Court had been published and commented in several French legal journals.

Germany

Görgülü v. Germany

Court judgment of 26 February 2004

The case concerns the violation in 2001 by the Naumburg Court of Appeal of the applicant's right to respect for his family life, in proceedings concerning the applicant's custody of and access to his child born out of wedlock in 1999 and living with a foster family. With regard to custody, the European Court considered that the Court of Appeal's decision not to give custody to the applicant failed to take into consideration the long-term effects on the minor child of a permanent separation from his biological father. With regard to the suspension of the applicant's visitation rights, in respect of which states have a narrower margin of appreciation, the European Court found that the Court of Appeal's decision was insufficiently reasoned and rendered any form of family reunion impossible, thus not fulfilling the positive obligation imposed by Article 8 to unite biological father and son.

In October 2002, the applicant once again requested the court of first instance, the Amtsgericht Wittenberg, to grant him parental rights and visiting rights as a provisional measure. In March 2004, the Amtsgericht Wittenberg, referring to the European Court's judgment, granted the applicant's request. However, the Naumburg Court of Appeal, in its judgments of 30 June and 9 July 2004, again refused to grant the applicant visiting rights – including the request for provisional visiting rights – and parental rights. The Court of Appeal considered that it was not bound by the Court's judgment, and that only the German State was, it being a State Party to the Convention. The Court of Appeal's judgment was final. The applicant's lawyer then applied to the Federal Constitutional Court, again requesting interim measures be adopted.

The European Court recalled the obligations upon parties to a dispute under Article 46 of the Convention, namely to adopt general measures and, if appropriate, individual measures to put an end to the violation found and as far as possible to erase the effects. It furthermore pointed out that in the instant case, this meant that that the applicant should at least have access to his child (§ 64 of the judgment).

In September 2004, the respondent State informed the Committee of Ministers that the German Government, in its observations addressed to the Federal Constitutional Court, had affirmed that all state organs were under the obligation to give effect to the judgments of the European Court of Human Rights. On 14 October 2004, the Federal Constitutional Court quashed the judgment of the Naumburg Court of Appeal of 30 June 2004 regarding the applicant's request for visiting rights and referred the case to a new chamber; the case is now pending before this chamber. In its judgment, the Federal Constitutional Court clarified how the German Constitution and the European Convention on Human Rights relate to each other and specified in particular that German courts must observe Convention standards and apply them when interpreting domestic law.

Italy

Immobiliare Saffi and 140 other cases v. Italy

Cases relating to the respondent State's systemic failure to enforce judicial eviction orders against tenants

Cases belonging to this group have been on the Committee of Ministers' agenda since 1997. These cases mainly concern the sustained impossibility for the applicants to secure the enforcement of judicial decisions ordering their tenants' eviction principally on account of the implementation of legislation providing for the suspension or staggering of evictions. The European Court concluded that a fair balance had not been struck between the protection of the applicants' right to property and the requirements of the general interest. In most of these cases, the Court also concluded that, as a result of the legislation at issue rendering eviction orders nugatory, the applicants had been deprived of their right to have their disputes decided by a court, contrary to the principle of the rule of law.

Individual measures

Information is expected on measures envisaged by Italy in order to allow seven applicants to recover possession of their apartments and thus put to an end the violations found. In the other cases, the applicants recovered their apartments between 1992 and 2003, i.e. between 4 and 17 years after the eviction orders had been issued.

General measures

The following have been considered by the Secretariat with a view to remedying the structural problems at the basis of violations found in the present cases:

(a) Finding effective alternative measures (instead of continuous legislative interventions suspending or staggering evictions) for tackling the public-order problems in the housing sector especially in densely populated cities. Law 431/98 on renting and repossession of housing has to some extent liberalised the renting system and provided for measures to increase the housing offer. However, this law appears to be insufficient, given the continuous flow of new cases brought to the European Court and the number of new violations found. Additional general measures would therefore appear necessary and all the more urgent given that the Constitutional Court held on 24 May 2004 that continuous legislative interventions to delay the enforcement of judgments may not be regarded as constitutional.

(b) Adoption of legislative measures to ensure effective compliance of the administration and civil servants with final judicial decisions: Law 431/98 *inter alia* sets conditions and deadlines for the enforcement of judicial eviction decisions. However, this law has not proved effective as it is still difficult in Italy to have eviction decisions enforced. The Constitutional Court judgment of 5 October 2001, which annulled a restriction of the right to have a judicial eviction order executed, may be an important step towards solving the outstanding problems, but the real effect and practical implications of this judgment remain to be clarified.

(c) Providing for compensation, if necessary by the state, to landlords in cases of protracted non-execution for financial losses caused by non-execution. Thus, state and tenants' civil liability could also be envisaged. Italian case law has recognised the right to compensation in cases of illegal administrative acts as well as the right to compensation in cases of unreasonable delay in the execution of judicial eviction orders, by virtue of the "Pinto Law" on excessive judicial proceedings. The Secretariat awaits information from Italy on the actual effects of the above case law and whether the respondent state has granted compensation to aggrieved landlords.

2181 cases related to length of judicial proceedings before administrative, civil and criminal courts, including certain specific aspects of civil procedures

The Ministers' Deputies adopted the following press release, summarising their conclusions regarding the situation of the Italian judicial system, drawn up in light of the third annual report on the length of judicial proceedings in Italy (CM/Inf/DH (2004) 20 rev) and the Information document submitted by the Secretariat (CM/Inf (2004) 23 rev).

"The Committee of Ministers concluded its examination of the third annual report on the length of judicial proceedings in Italy, prepared by the Italian authorities in conformity with Interim Resolution ResDH (2000) 135.

The Committee noted with concern that an important number of reforms announced since 2000 was still pending for adoption and/or for effective implementation and reminded the Italian authorities of the importance of respecting their undertaking to maintain the high priority to the reforms of the judicial system and to continue to make rapid and visible progress in the implementation of the reforms.

As regards the effectiveness of the measures adopted so far, the Committee deplored the fact that no stable improvement could be seen yet: with a few exceptions, the situation generally worsened between 2002 and 2003 with the increase in both the average length of the proceedings and the backlog of pending cases. The Committee accordingly confirmed its willingness to pursue the monitoring until a reversal of the trend at the national level is fully confirmed by reliable and consistent data.

In this context, the Committee of Ministers notably:

– incited Italy to deploy new significant efforts notably as regards the implementation of measures concerning the internal organisation of tribunals, their modernisation and the strengthening of their resources;

– regretted the fact that, in spite of the prolongation for a further year of the mandate of the *sezioni stralcio*, the latter did not appear to be able to finish within the fixed deadlines the very old civil cases which had been devolved to them in 1998 and incited the Italian authorities to take all necessary measures ensuring that these cases are finished without any further delay;

– encouraged Italy to ensure the respect of the Convention's requirements on

the reasonable length of judicial proceedings by interpreting and applying the Pinto law as well as other relevant Italian laws in conformity with the case-law of the Strasbourg Court and to pursue the study of further measures in order to accelerate proceedings.

In the light of this situation, the Committee of Ministers took note of the information provided by Italy concerning a follow-up plan aimed at ensuring the respect of the expected execution objectives. It invited Italy to submit rapidly the complementary information requested as well as to complete the above-mentioned follow-up plan by an action plan. It also decided to examine the 4th report at the latest in April 2005."

Dorigo Paola v. Italie

Interim Resolution DH (99) 258

The case concerns the unfairness of certain criminal proceedings as a result of which the applicant was condemned in 1994 to more than thirteen years' imprisonment for, among other things, involvement in a terrorist bomb attack on a NATO military base in 1993. His conviction was based exclusively on statements made before the trial by three "repented" co-accused, the applicant not having been allowed to examine these statements or to have them examined, in conformity with the law in force at the relevant time.

There has not been any significant progress in the adoption of individual measures in this case, now more than five years after the finding of the violation: the applicant, who has always claimed to be innocent, has spent the last ten years in prison, serving a sentence resulting from unfair proceedings and continues to demand a review of his trial.

Re-examining judicial proceedings or re-opening proceedings is, however, impossible under current Italian law and the adoption of a law introducing this possibility has met with strong opposition in the Italian Parliament, despite the adoption by the Committee of Ministers of two Interim Resolutions in 2002 and 2004, strongly urging, without further delay, the Italian authorities to ensure the adoption of measures allowing for the serious consequences for the applicant in this case to be erased. In this context, the Italian delegation made known in June 2004 that the only alternative to the adoption of a new law was the possibility for the applicant to obtain a presidential pardon. The delegation indicated in this connection that the applicant must request such a pardon, adding that despite the applicant's manifest refusal to do so a procedure for obtaining a presidential pardon had been set in motion and was being examined at the Ministry of Justice. The Committee of Ministers therefore requested the Secretariat to prepare a draft letter to the Italian authorities if there is no significant progress in this particular matter. It was made clear that a presidential pardon in itself, granted at this late stage, would not suffice to solve the problem of the individual measures necessary, given that it would erase neither the crime nor the accessory penalties and that its only effect would be to allow for the release of the applicant before the scheduled date of April 2007. In addition, in accordance with the Committee of Ministers' practice, a pardon can only be considered an alternative measure to re-opening proceedings at a very early stage (see the cases of *Van Mechelen* v. *Netherlands* and *Bönish* v. *Austria*) and is fully acceptable to the applicant. This is not the case. Accepting a presidential pardon implies a recognition of guilt, which the applicant refuses, insisting on the re-opening of proceedings and the total redress of the consequences of his conviction.

Latvia

Slivenko v. Latvia

Court judgment of 9 October 2003

The case concerns the deportation of the applicants, former Latvian residents of Russian origin, to Russia. The first applicant, whose father was an officer in the Soviet army, had lived in Latvia all her life. The second applicant, the daughter of the first applicant, was born in Latvia and lived there until she was 18. In November 1994 the applicants' registration (as "ex-USSR citizens") in the Latvian residents' register was annulled relying on the Latvian-Russian treaty of 1994 on the withdrawal of Russian troops. The applicants' deportation was ordered in August 1996. They also lost the flat where they had lived. The applicants unsuccessfully challenged their removal from Latvia before the domestic courts. In July 1999 the applicants moved to Russia to join the first applicant's husband and subsequently obtained Russian citizenship. The applicants' deportation order prevented them from returning to Latvia for 5 years (this prohibition expired on 20August 2001) and then limited their visits to 90 days a year.

The European Court found that the expulsion of the applicants could not be considered as necessary in a democratic society, in that they were at the material time sufficiently integrated into Latvian society and that their presence could not be construed as a threat to national security simply through belonging to the family of a retired Soviet soldier who was not himself considered to present such a danger and had remained in the country on retiring in 1986.

Individual measures

In September 2004, the Latvian authorities indicated that, upon their demand, the Supreme Court had quashed the judgment of the Regional Court of Riga of May 1998 in a judgment of 10 August 2004 and had decided to re-open the proceedings for due to new evidence and circumstances.

General measures

Information is awaited concerning publication and dissemination of the European Court's judgment to authorities competent for deportation matters so as to allow them to apply the principles established by the Court in future, similar cases. Further measures are being studied.

Luxembourg

Thoma v. Luxembourg

Court judgment of 29 March 2001

This case concerns the fact that, in sentencing the applicant (a journalist) to pay damages as a result of a breach of his obligation to provide bona fide information to the public, the competent domestic judges only had regard to the quotation by the applicant of a litigious passage of an article written by a fellow journalist and found solely on this basis that the applicant had adopted the allegation contained in the quoted text (corruption of an identifiable category of civil servants), on the ground that he had failed formally to distance himself from it. The European Court found a violation of Article 10.

Concerning individual measures, the just satisfaction awarded by the Court was held to be sufficient in this case.

With regard to general measures, the authorities of the Grand Duchy of Luxembourg informed the Committee of Ministers that a new law on freedom of expression in the media was adopted on 8 June 2004. This law includes provisions on quoting third persons by journalists. It provides that where a publication communicated to the public contains information which could threaten a person's right to presumption of innocence, or to his or her private life or reputation or honour; or information prejudicial to the protection of minors, the responsible person (who may be a journalist) is not personally liable provided it is demonstrated that the said information is an accurate quotation of a third person. In such cases, quotations must be clearly shown as such and their authors identified. Publication of such information must also be justified by a preponderant public interest to be informed of the matter at issue.

In addition, some measures had already been taken, including a conference principally concerning the draft of this law, organised during Luxembourg's Chairmanship of the Committee of Ministers, on 30 September 2002 and 1 October 2002, and the rapid publication of the European Court's judgment and its dissemination to the competent authorities.

Roemen and other v. Luxembourg

Court judgment of 25 February 2003

This case concerns searches conducted in 1998 at the home and the workplace of the first applicant, a journalist, and at the chambers of the second applicant, his lawyer, following the publication in a daily newspaper of an article by the first applicant. The European Court found that the searches, which had been carried out as part of a preliminary investigation, were intended to discover his journalistic sources. It held that there had been a violation of the first applicant's right to freedom of expression and a violation of the second applicant's right to respect for her home.

With regard to *individual measures*, the document seized during the searches in the second applicant's chambers has been returned, in execution of the European Court's judgment.

Concerning *general measures*, the authorities of Luxembourg informed the Committee of Ministers of the adoption of three types of measure:

1. A new law on freedom of expression in the media was adopted on 8 June 2004. Three relevant points relating to this law were clarified, as follows:

a. Following the discussions with the Secretariat concerning the initial draft law, the law was adopted with amendments to make it clear that the right to protection of journalistic sources is not restricted to cases in which a journalist is involved in proceedings as a witness (Article 7).

b. Concerning cases in which the protection of certain specified interests listed in the law must take priority over the protection of journalistic sources (Article 8), the authorities consider that this provision must be interpreted in the light of the general principle laid down in Article 2 of the law, which recalls Article 10 of the Convention.

c. Finally, in order to resolve the conflict between the right to protection of sources and the obligation to prove the truth of alleged facts in the context of criminal proceedings for defamation or of civil proceedings for an attack on a person's honour or reputation, the Law (Articles 17 and 22) provides that a journalist may avoid liability either by proving the truth of the allegations or by proving that sufficient steps had been taken to conclude that the reported facts were true and that there was a preponderant interest of the general public in knowing the impugned information.

2. The attention of investigating judges has been drawn to the need to draft search warrants with more precision, in conformity with the case law of the European Court. The Juge d'instruction-Directeur (Chief investigating judge) has confirmed that all investigating judges have taken note of this requirement.

3. The European Convention on Human Rights and the case law of the European Court of Human Rights, particularly regarding freedom of expression, are applied directly by the courts of Luxembourg. In order to ensure that the law is interpreted in conformity with the case law of the European Court the Roemen judgment has been sent out to courts, investigating judges, and the Director of Public Prosecutions (*Procureur général d'Etat*) for information and dissemination. The part of the judgment of the European Court dealing with the law was published in CODEX (monthly law and politics journal of Luxembourg), in February 2003 (Internet site: www.codex-online.com).

Poland

Broniowski v. Poland

Court judgment of 22 June 2004

The case relates to the violation of the applicant's right to the peaceful enjoyment of his possessions, in that his entitlement to compensation for property abandoned in the territories beyond the Bug River (the Eastern provinces of pre-war Poland) in the aftermath of the Second World War had not been satisfied.

Regarding individual measures, the question of Article 41 was reserved concerning the compensation for pecuniary and non-pecuniary damage.

Concerning general measures, this is the first time that a judgment of the European Court has laid out general measures that a respondent state must implement in order to remedy a structural deficiency at the root of a violation.

The Court recalled that the violation of Article 1 of Protocol No. 1 originated in a widespread problem which resulted from deficiencies in the domestic legal order which has affected nearly 80 000 people and which may give rise in future to numerous subsequent, well-founded applications. Referring to the Committee of Ministers' Resolution of 12 May 2004 on judgments revealing an underlying systemic problem and to the Recommendation of the same date on the improvement of domestic remedies, the Court decided to indicate the measures that the Polish State should take, under the supervision of the Committee of Ministers and in accordance with the subsidiary character of the Convention, so as to avoid being seised of a large number of similar cases.

On 6 July 2004 the Court decided that all similar applications (177 at present) – including future applications – should be adjourned pending the outcome of the leading case and the adoption of the measures to be taken at national level.

Cases of length of criminal proceedings

Regarding the length of proceedings, the Court stressed that the introduction in Polish law of an effective remedy, intended to give litigants the opportunity to complain of the excessive length of judicial proceedings on the national level, in no way dispensed with the need to adopt additional general measures in order to accelerate the handling of cases before the national courts.

Concerning the effective remedy in cases of excessive length of proceedings, a new law was adopted on 17 June 2004 in response to the Court's judgment in the case of *Kudla* v. *Poland*, in which the Court found a violation of Article 13 of the Convention, due to the lack of effective remedies to enforce the right to a hearing within a reasonable time.

The new law is intended to offer effective remedy in such cases. It enables the parties to judicial proceedings to lodge a complaint regarding the length of proceedings while the case is still pending. An appeals court can find a violation of Article 6, and order the first instance court to take measures to speed up the proceedings and to grant the litigant just satisfaction up to 10 000 zlotys (approximately 2 250 euros). In addition, following the adoption on 17 June 2004 of the law amending the provisions of the Civil Code concerning the civil liability of the State Treasury for actions or omissions of public authorities, the parties to proceedings already finished may demand compensation from the state. Those having applied to the European Court of Human Rights while the domestic proceedings were still pending can also avail themselves of this new remedy, on the condition that the application has not yet been declared admissible by the Court.

The Court is currently examining whether these new remedies can effectively address the Polish cases of excessive length of criminal proceedings. Four trial cases will be dealt with in priority and some 700 similar cases will be adjourned.

A draft Interim Resolution is currently being prepared, in collaboration with the Polish delegation to the Council of Europe, in order to list the measures adopted and those that have yet to be.

Portugal

Maire v. Portugal

Court judgment of 26 June 2003

This case, along with two others on the agenda of the Committee of Ministers (*Sylvester* v. *Austria* and *Hansen* v. *Turkey*) concerns the abduction of a child by his mother and the application of court judgments as to the custody of the child. The Secretariat is currently preparing a memorandum on this subject.

The applicant, a French national, complained of a violation of his right to respect for his family life due to the failure of the Portuguese authorities to enforce a French judicial decision of 1996 awarding him the custody of his son, born in 1995. Following this decision, the child's mother, a Portuguese national, took the child with her

to Portugal where they lived in a situation of illegal displacement for a period of 4½ years. In the meantime, the Portuguese authorities applied before the domestic courts for judicial restitution of the child. In 1999, the competent domestic court ordered the child's placement in the Institute of Social Reintegration; this decision was never executed because of the mother's illegal behaviour. In 2001, the Portuguese authorities, given the passage of time and the child's settlement in his new environment, asked the competent court to suspend this decision. At the same time, the competent court, at the Portuguese authorities' request, provisionally awarded custody to the mother. When the European Court delivered its judgment, these proceedings were also still pending. In 2002, the applicant was granted visiting rights. In July 2004, a Portuguese court, in a final judgment, gave the mother custody of the child. The applicant no longer exercises his visiting rights at present.

The Secretariat is awaiting information on possible measures envisaged for the effective, swift execution of judicial decisions regarding return of abducted children, especially when the abductor repeatedly refuses to abide by the law (§§74 and 76 of the judgment). In this context, the Secretariat notes that relevant recommendations are found in Parliamentary Assembly Resolution 1291 (2002).

Turkey

Cyprus v. Turkey

Court judgment of 10 May 2001

The Committee of Ministers focussed its debates on the three following questions:

Question of missing persons

At the demand of the "President of the Turkish Republic of Northern Cyprus", the Committee on Missing Persons (CMP) met several times in August and September 2004. The goal of these meetings was to reactivate the CMP and to reinforce its powers in order to meet the requirements of the Convention. The Committee set the objective of completing the investigations remaining open on either side of the island as soon as possible, working from a detailed schedule to be agreed upon by both parties. Information is awaited on developments since these meetings on these issues.

The Secretariat noted that the reactivation of the CMP could partially meet the requirements of Article 3 of the Convention, because it should enable the drafting of an complete list of missing persons, to determine whether the people figuring on the list are alive or dead and, in the latter case, to determine the approximate date of death. However, Article 3 also requires that investigations be carried out as to the exact circumstances of disappearances and deaths and compensation for victims; these aspects are not covered by the CMP's mandate at present. In the absence of any eventual enlargement of the CMP's powers, the Committee of Ministers is awaiting information on possible alternative measures.

The Turkish authorities announced that a special information unit has been set up, in the framework of the Bureau of the Turkish member of the CMP, in the northern part of Cyprus for the families of missing persons. Confirmation of the effective functioning of this unit is awaited, as are certain details of its working methods.

Specific questions concerning the living conditions of the Greek Cypriots in the northern part of Cyprus

In connection with the issue of secondary education, the Turkish authorities indicated that the legislative process aiming to regulate the schooling system for the children of Greek-Cypriot and Maronite families in northern Cyprus was under way and that the secondary school of Rizokarpaso had been opened on 13 September 2004, with 12 pupils and 15 teachers. The Cypriot authorities welcomed the initiative, but drew attention notably to the fact that at least one of the teachers had been rejected by the authorities of northern Cyprus and that the opening of the lower secondary school only partially meets this aspect of the requirements of the Court's judgment, mainly because there is no upper secondary school (the last three years of school education). The Turkish authorities declared that the full secondary school programme would be set in due course. Further information is awaited as to the development of the draft law and the effective functioning of the Rizokarpaso secondary school.

With regard to the censorship of school manuals for Greek Cypriot primary schools in the northern part of the island, deemed excessive by the Court in view of Article 10 of the Convention, the Turkish authorities stated that the filtering of all educational material used in the northern part of Cyprus is now carried out in conformity with the Council of Europe's standards and that the process has been made faster and more flexible. In this connection, the Cypriot authorities claimed that 25% of school manuals are still censored. The Turkish authorities, on their part, indicated that 13 out of 66 manuals presented contained material deemed offensive. Further information is awaited on this issue (texts, criteria and relevant procedures).

Regarding freedom of religion, the Turkish authorities announced that in August and September 2004 several religious services had been facilitated in different parts of the Karpas region and that further information would be forthcoming in December 2004.

Military courts

It is recalled that, in a judgment of 12 April 2001, the "Turkish Cypriot Supreme Constitutional Court" ruled, referring in particular to the case law of the European Court, that the composition of the "Security Forces Court" was anti-constitutional due to the participation of military judges in cases concerning civilians. Following this judgment, legislative amendments were brought to the Law No. 34/1983 regarding the composition of these courts and the procedural guarantees to be applied. The remaining question no longer appears to be any concern, given that the Turkish authorities announced in September 2004 that the "Parliament" had adopted further amendments to the above-mentioned law to the effect that civilians would no longer be brought before military courts on the basis of sections 18, 19, 26 and 29 of the "Law of military offence and penalties". According to the Turkish authorities, the examination of all the cases concerning civilians pending before military courts has been suspended until they can be referred to civil courts. In October 2004, the Turkish authorities provided the text of the amendments adopted and a list of the cases in question. It has yet to be confirmed whether the civil courts to which all these cases have been referred have recommenced their examination.

Sadak/Zana v. Turkey

Court judgment of 11 June 2002

The case concerns the violation of the right to a fair trial in proceedings before the Ankara State Security Court, which sentenced in December 1994 the four applicants, members of the Turkish Grand National Assembly, to 15 years' imprisonment for belonging to an armed organisation.

The applicants' trial was re-opened on 28 February 2003 after the adoption of a new law allowing the review of criminal convictions in cases for which the European Court has found a violation of the Convention.

Following the adoption by the Committee of Ministers of a second Interim Resolution on 6 April 2004, deploring the fact that the applicants continued to serve their original sentences, despite the re-opening of their trial before the State Security Court of Ankara. The applicants, therefore, were still being held in detention. The State Security Court of Ankara confirmed its original judgment and the sentence of imprisonment on 21 April 2004. The applicants lodged an appeal against the State Security Court judgment before the Court of Cassation.

After having decided to suspend the execution of the applicants' imprisonment and ordered their release on 9 June 2004, the Court of Cassation examined the appeal on 14 July 2004 and quashed the ruling handed down in April by the State Security Court, in which it found several irregulari-

ties. Furthermore, by invoking the new Article 90 of the Constitution – according to which international human rights treaties take precedence over contrary provisions of domestic law – the Court of Cassation also stressed the fact that the violations of the Convention found by the European Court had not been correctly redressed in the re-examination procedure which concluded in the ruling of April 2004. A new trial before a civilian court was ordered, given that the State Security Courts were abolished by the constitutional amendment of May 2004. The first hearing within the framework of the new procedure was scheduled to take place on 22 October 2004.

Institut de prêtres français v. Turkey

Court judgment of 14 December 2000

The case concerns the expropriation of a plot of land belonging to the applicant Institute and the annulling of its legal personality. The friendly settlement agreed to by the parties lays down certain specific obligations which the respondent State must undertake, including that of granting the right to usufruct to the benefit of the priests in charge of the applicant Institute and an agreement on the distribution of the incomes resulting from the renting of the properties among the institute, the Tax authorities and the Directorate General of Foundations.

On 8 October 2003 the Committee of Ministers adopted an Interim Resolution in which it urged the Turkish authorities to comply without delay with the Court's judgment in this case. By letter of 17 June 2004, the Turkish delegation sent the Secretariat copy of a decree by the Council of Ministers providing that the right to usufruct shall be granted to Mgr Fontaine, in line with a decision of the Board of Foundations of 12 May 2004.

However, by letter of 8 September 2004, the representatives of the applicant Institute made it known that Mgr Fontaine no longer represented the Institute and that steps were being taken to set up an association intended to fill this role. The Committee of Ministers is therefore awaiting information on the result of this undertaking and further details as to the legal status of the proposed association and the advancement of the granting of the right to usufruct to its benefit. In addition, confirmation is awaited that the agreements on the income also cover the period during which the friendly settlement was not executed.

Ukraine

Sovtransavto Holding v. Ukraine

Court judgment of 25 July 2002

The case concerns the failure to respect the applicant company's right to a fair trial before an impartial and independent tribunal in respect of certain proceedings conducted between 1997 and 2002 before the Ukrainian courts with a view to establishing the unlawfulness of domestic decisions which resulted in the depreciation of its shares in – and the ensuing loss of control over – a Ukrainian transport company.

The main deficiencies found by the Court consist of:

– repeated attempts by the President of Ukraine to influence domestic court decisions;

– application of "protest" procedure ("application for supervision") making it possible to quash final judicial decisions without any limitations;

– the refusal by courts to examine the arguments on the merits in a public hearing and the absence of adequate motivation of judicial decisions.

The Court concluded in addition that the manner in which the impugned proceedings were conducted and concluded had violated the applicant company's right to peaceful enjoyment of its possessions.

On 11 February 2004 the Committee of Ministers adopted an Interim Resolution, taking stock of the measures adopted so far and pointing out the outstanding questions.

Individual measures

Following the judgment of the European Court, the private limited company "Sovtransavto" made a request for re-opening of the domestic proceedings. On 19 August 2003 the Supreme Court granted this request. The previous judicial decisions were quashed and the case was referred to the Commercial Court of Lugansk Region for new examination. The Ukrainian delegation indicated that the applicant's appeal against the first instance decision of 7 May 2004 had been rejected by the Court of Appeal of Donetsk on 12 July 2004 and referred to the Supreme Commercial Court for examination.

A copy of these decisions of 7 May 2004 and 12 July 2004 is awaited as well as further information on the development of these proceedings.

General measures

The Ukrainian delegation indicated that the written information concerning the various measures adopted following this decision had been provided to the Secretariat during the Committee of Ministers' meeting. This information concerned notably the adoption of legislative provisions upon the order of the President of Ukraine instructing the Prime Minister and different ministries to take appropriate measures to guarantee the independence of the judiciary. It added that the initial and in-service training of judges continued within the framework of the Judges' Academy of Ukraine, created in 2002, and that the power of public prosecutors to ask for the annulment of final judgments in civil proceedings had been abolished. The Secretariat is currently reviewing this information.

United Kingdom

Matthews v. the United Kingdom

Court judgment of 18 February 1999

The case concerns the non-respect of the applicant's right to participate in elections to choose the legislature in that no election to the European Parliament (EP) was held in Gibraltar in 1994.

General measures

The government expressed a strong preference for an agreement of its EU partners to the enfranchisement of Gibraltar through a change to the 1976 EC Act on Direct Elections to the European Parliament. The United Kingdom committed itself to making every effort to achieve enfranchisement for Gibraltar for the 2004 EP elections.

In April 2001 the delegation indicated that, in view of the absence of agreement between the member states of the European Union concerning a solution, the government was considering the possibility of implementing the judgment of the European Court by the adoption of a regulation at the national level without prior amendment of the 1976 Act. On 26 June 2001 the Committee of the Ministers adopted an Interim Resolution noting the complexity of the issues raised by this judgment and inviting the United Kingdom to take the necessary measures to guarantee the rights under Article 3 of Protocol No. 1 in respect of elections to the European Parliament in Gibraltar. In November 2002 the government introduced the European Parliament (Representation) Bill to the House of Commons. Pursuant to its provisions, Gibraltar would be treated as part of one of the English or Welsh electoral regions for the purposes of EP elections. The United Kingdom Parliament adopted the European Parliament (Representation) Act which received the Royal Assent on 8 May 2003.

It should be noted that Spain questioned the compatibility of the European Parliament (Representation) Act 2003 with European Union law before the European Commission, because this act grants franchise to persons who are not nationals of the UK and hence not EU citizens, and because it creates a "combined electoral region" incorporating Gibraltar into an existing electoral region in England and Wales. On 29 October 2003 the Commission declared that the United Kingdom has organised the extension of voting rights to residents in Gibraltar within the framework of the margin of discretion presently given to member states by EU law. However the Commission did not adopt a reasoned opinion within the meaning of Article 227 (action for non-fulfilment of an obligation) of the Treaty Establishing the European Community.

The European Parliamentary Elections (Combined Region and Campaign Expenditure) (United Kingdom and Gibraltar) Order of 2004 approved by the British Parliament included Gibraltar in the constituency

of the South-West region. On 10 June 2004 the citizens of Gibraltar took part for the first time in elections to the European Parliament with a turnout of 57.54%. The combined region South-West and Gibraltar elected 7 members of the European Parliament.

Action of the security forces in the United Kingdom

Court judgments McKerr, Shanaghan, Hugh Jordan, Kelly and others of 4 May 2001, McShane of 28 May 2002 and Finucane of 1 July 2003

These cases concern the death of applicants' next-of-kin during police detention or security forces operations or in circumstances giving rise to suspicions of collusion of such forces. In this respect, the Court found various combinations of the following shortcomings in the proceedings for investigating deaths giving rise to possible violations of Convention rights: lack of independence of the investigating police officers from security forces/police officers involved in the events; lack of public scrutiny and information to the victims' families concerning the reasons for decisions not to prosecute; the inquest procedure did not allow for any verdict or findings which could play an effective role in securing a prosecution in respect of any criminal offence which might have been disclosed; the soldiers / police officers who shot the deceased could not be required to attend the inquest as witnesses; the non-disclosure of witness statements prior to the witnesses' appearance at the inquest prejudiced the ability of the applicants to participate in the inquest and contributed to long adjournments in the proceedings; the inquest proceedings did not commence promptly and were not pursued with reasonable expedition. The McShane case also concerns the finding by the Court of a failure by the respondent state to comply with its obligations under Article 34, in that the police had – albeit unsuccessfully – brought disciplinary proceedings against the solicitor who represented the applicant in national proceedings for having disclosed certain witness statements to the applicant's legal representatives before the European Court.

In 2002, the United Kingdom authorities had informed the Committee of Ministers of a series of measures undertaken in view of the execution of the European Court's judgments. However, given the complexity of the cases, a number of matters remain to be addressed. The United Kingdom authorities later informed the Committee of Ministers that numerous additional measures had been or were in the course of being undertaken. Among these, two studies were carried out on the system of coroners with the aim, among others, of reforming the system of coroners inquests in order to comply with the requirements of Article 2 of the Convention. Certain developments in case law have also been noted, including in particular the judgment of the House of Lords handed down on 11 March 2004, In re McKerr [2004] UKHL 12.

The Committee of Ministers is currently examining the state of execution of these judgments in view of the new information received.

Final Resolutions closing monitoring procedure

Germany

Freedom of expression: disciplinary measures taken against a medical doctor having contravened the code of ethics forbidding doctors from advertising

Resolution ResDH (2004) 41 adopted on 6 July 2004 concerning the judgment of the European Court of Human Rights of 17 October 2002 in the case of Stambuk v. Germany

This case related to the conviction of a medical doctor to a disciplinary sanction for having taken part in an article for the press concerning his work. This was held to be a breach of the ethical ban on advertising by doctors. The Court therefore found that the German courts did not strike a fair balance between the interests at stake, namely the protection of health, the interests of other medical practitioners, the applicant's right to freedom of expression and the role of the press.

The Government of the respondent State gave the following information on individual and general measures undertaken to redress the consequences of the violation and to avoid similar violations in the future:

The Government recalled that the Land of Baden-Württemberg had amended the Baden-Württemberg Act on the Councils for the Medical Professions of 16 March 1995, with Article 1, paragraph 4, of a law dating from 25 February 2003, to allow for the possibility of re-opening proceedings following a conviction. Under the amended Act a convicted person or the President of the Baden-Württemberg professional medical body may ask for the re-opening of a case closed by a final judgment by referring to Article 359 of the Code of Criminal Procedure. The applicant has accordingly been informed of his right to request re-opening of proceedings before the Disciplinary Appeals Court for Medical Practitioners (*Landesberufsgericht für Ärzte*).

To avoid similar violations of the Convention in the future, copies of the judgment of the European Court of Human Rights have been sent out to the Ministries of Health of the Länder together with a circular letter in which it is suggested in particular that the judgment should be further disseminated to the professional medical bodies and Labour Courts of the Länder. The Court's judgment has moreover been published in the 2002 volume of *Europäische Grundrechte Zeitschrift* and in No. 7 of *Neue Juristische Wochenschrift* 2003.

The Government considers that, in view of the above developments and the fact that direct effect is given to judgments of the European Court by German courts, there no longer exists any risk of the repetition of the violation found in the present case and that Germany has thus fulfilled its obligations under Article 46 in this case both as regards general and individual measures.

Right to respect for family life: withdrawal of parental rights and placing of children with foster parents

Resolution ResDH (2004) 40 adopted on 6 July 2004 concerning the judgment of the European Court of Human Rights of 26 February 2002 in the case of Kutzner v. Germany

The case concerns the decision of the German authorities to withdraw the applicants' parental rights with respect to their two young daughters on the ground that the applicants did not have the intellectual capacity required to bring up their children. The girls were placed in separate, unidentified, foster homes and restrictions were imposed on the applicants' visiting rights. The Court considered that although the reasons relied on by the administrative and judicial authorities were relevant, they were not sufficient to justify such a serious interference in the applicants' family life.

The Government of the respondent State provided the following information on individual and general measures undertaken to redress the consequences of the violation and to avoid similar violations in future:

Following the judgment of the European Court of Human Rights, the competent court, the Bersenbrück Family Court, appointed expert psychologists to examine whether and under what circumstances the applicants' children could be returned to them without risk to their well-being. On 28 November 2003 this Court, basing itself on reports by the experts, revoked its order depriving the applicants of custody and guardianship of their children. Accordingly the children returned to their natural family before Christmas 2003.

Furthermore, the Government recalls that in the German legal order, direct effect is given to judgments of the European Court by German courts (see the case of *Vogt* v. *Germany*, Resolution DH (97) 12). To this effect and in order to avoid repetition of a violation similar to that found in this case the judgment has been published in the 2002 volume of *Europäische Grundrechte Zeitschrift* and sent out to the judicial authorities directly concerned.

Lithuania

Review of lawfulness of detention on remand

Resolution ResDH (2004) 42 adopted on 20 July 2004 concerning the judgment of the European Court of Human Rights of 10 October 2000 in the case of Graužinis v. Lithuania

Following the finding of the violation, the Government of the respondent State undertook the following measures:

Legislative amendments

The legislative provisions in force during the applicant's detention on remand in 1997, which were at the root of the violation found, have been modified.

Article 106 § 3 of the Code of Criminal Procedure in force (version of the law No. VIII-1488, 21 December 1999) specifies that participation of the arrested person in the court hearing which decides the question of extending the time limits of the person's detention on remand at the stage of pre-trial investigation, is mandatory.

Furthermore, according to the present Article 109 of the Code of Criminal Procedure in force (version of the law No. VIII-784, 11 June 1998), complaints as to the lawfulness of detention on remand may be filed by the arrested person or his/her defence counsel during both the stage of pre-trial investigation and judicial examination of the case, and for the purposes of examining the complaint as to detention under remand a court hearing has to be held, to which the arrested person and his/her defence counsel, or only his/her defence counsel, have to be summoned. Having regard to the direct effect of the European Convention on Human Rights and of the Court's case law before the Lithuanian criminal Courts (e.g. in criminal cases: Supreme Court's decisions of 29 April 2003 – case No. 2K-322/2003 – or of 16 September 2003 – case No. 2K-504/2003), the Lithuanian Government considers that this article will be applied in future similar cases in conformity with the Convention and the Court's case law.

Finally, following the entry into force of the current version of Article 372 § 4 of the Code of Criminal Procedure (law No. VIII-956, 10 December 1998), this provision no longer contains any prohibition on appeals against decisions of first-instance courts on the imposition, modification or revocation of detention on remand.

Publication

The Court's judgment has moreover been published in Lithuanian in *Europos ûmogaus teisiu komisijos ir Europos ûmogaus teisiu teismo sprendimai bylose prieš Lietuvos Respublika* (1997.01.01- 2000.01.01), *Primas leidimas* (Reports of the European Commission of Human Rights and Judgments of the European Court of Human Rights with regard to the Republic of Lithuania). In addition, the judgment was transmitted to the authorities concerned.

Right to a fair trial

Resolution ResDH (2004) 43 adopted on 6 July 2004 concerning the judgment of the European Court of Human Rights of 10 October 2000 in the case of Daktaras v. Lithuania

The case concerns the insufficient guarantees provided to exclude all reasonable doubt as to the impartiality of the composition of the Supreme Court which had examined the applicant's cassation petition. The applicant complained that the cassation judges had been appointed by the President of the Criminal Division of the Supreme Court, to examine a cassation petition lodged by the same President.

Following the finding of the violation, the respondent Government took the following measures:

Individual measures

The domestic proceedings concerning the applicant were re-opened on 29 January 2002 by a decision of the Criminal Chamber of the Supreme Court. This re-opening was made possible by the application of the new section of the Code of Criminal Procedure called "Re-opening of criminal cases following a judgment of the European Court of Human Rights", introduced in the Code by a law passed on 11 September 2001, which entered into force on 15 October 2001.

Following the re-opening of the national proceedings concerning this case, on 2 April 2002 a plenary session of the Criminal Chamber of the Supreme Court annulled the cassation judgment which had been adopted by this same Chamber on 2 December 1997. According to the new judgment, the cassation petition submitted by the President of the Criminal Chamber of the Supreme Court was not taken into account. The cassation petition submitted by Mr Daktaras, as well as that of his legal representative, were rejected.

General measures

The new Lithuanian Code of Criminal Procedure (Baudûiamojo proceso kodeksas) was adopted on 14 March 2002 and came into force on 1 May 2003. The legislative provision at issue, which provided for the possibility of entitling certain judges, including the Presidents of Divisions of the Supreme Court, to submit a cassation petition, has been repealed.

Moreover, the text of the judgment of the European Court of Human Rights has been published in Lithuanian in *Europos ûmogaus teisiu komisijos ir Europos ûmogaus teisiu teismo sprendimai bylose prieš Lietuvos Respublika* (1997.01.01- 2000.01.01), *Primas leidimas* (Reports of the European Commission of Human Rights and Judgments of the European Court of Human Rights with regard to the Republic of Lithuania). In addition, the judgment has been transmitted to the authorities concerned.

Degrading treatment during detention – Respect for correspondence

Resolution ResDH (2004) 44 adopted on 6 July 2004 concerning the judgment of the European Court of Human Rights of 24 July 2001 in the case of Valašinas v. Lithuania

The case concerns degrading treatment – a body search carried out in humiliating circumstances – and an interference with the right to respect for secrecy of correspondence suffered by the applicant during his imprisonment.

Following the finding of the violation the respondent State took the following measures:

The judgment of the European Court of Human Rights was translated into Lithuanian and published in the collection *Europos ûmogaus teisiu spredimai bylose prieš Lietuvos Respublika* (2000.01.01-2001.01.01) (Reports of the European Commission of Human Rights and Judgments of the European Court of Human Rights with regard to the Republic of Lithuania). Furthermore, following a letter from the Representative of the Lithuanian Government to the European Court to the Prison Department of the Lithuanian Ministry of Justice on 14 November 2002, the Government of Lithuania drew the attention of the prison authorities to the need to ensure that violations of Article 3 of the Convention do not recur when conducting searches of detained persons. The prison authorities were also informed about the judgment rendered in this case.

Concerning the violation found by the European Court with regard to the control of correspondence of detained persons, the Lithuanian Parliament (*Seimas*) adopted the new Code on the Execution of Criminal Sentences (*Bausmiu vykdymo kodekas*) which replaced the Penitentiary Code. The new Code entered into force on 1 May 2003. In accordance with the provisions of the Code, it is no longer possible to control the correspondence of detainees without the authorisation of the prosecutor or the governor of the detention centre, or on the basis of a judicial decision. The Code also stipulates the cases in which the control of detainees' correspondence cannot be authorised. These cases include, *inter alia*, correspondence with the institutions of the European Convention of Human Rights.

Conviction on the basis of statements made by an anonymous witness

Resolution ResDH (2004) 45 adopted on 6 July 2004 concerning the judgment of the European Court of Human Rights of 28 March 2002 in the case of Birutis and others v. Lithuania

The Government of the respondent State provided the following information on the general and individual measures taken following the judgment of the European Court:

The violation of the European Convention on Human Rights in this case originated in Articles 267, paragraph 5 and 317, paragraph 1 of the Code of Criminal Procedure, which provided that where the identity of a witness is secret, a court could dispense with hearing that person by reading out the anonymous statement at a trial hearing. Following the European Court's judgment finding a violation of Article 6, paragraphs 1 and 3 (d) of the Convention, the Lithuanian authorities undertook a legislative reform of the above-mentioned provisions. On 14 March 2002, the Lithuanian Parliament adopted a new Code of Criminal Procedure which entered into force on 1 May 2003. The procedure for taking evidence from an anonymous witness is laid down in Article 282. An anonymous witness may thus be questioned at a non-public hearing after appropriate acoustic and visual obstacles have been created to prevent the parties from establishing the identity of the secret witness. If such obstacles cannot be created at a court hearing, the witness should be questioned in some other place in the absence of the parties. Before questioning an anonymous witness, the party which intends to put questions to the witness should submit the questions in writing to the presiding judge. The statements made by the witness shall be recorded by the presiding judge or one of the trial judges. The presiding judge or one of the trial judges shall read out these statements at a court hearing. Additional questions may be posed under this procedure after the statements have been read out. If personal appearance in court seriously threatens the life, health or freedom of an anonymous witness or close relatives, the witness should not be summoned to appear in court, but statements made before the investigating judge should be read out at a court hearing. Such a witness may be questioned by audiovisual means after the creation of acoustic and visual obstacles.

In order to ensure that the new legislation is applied in conformity with the Convention particularly as defined in the present judgment, the Court's judgment has been published in Lithuanian in the *Europos ûmogaus teisiu teismo spredimai bylose prieš Lietuvos Respublika* (2002.01.01-2003.01.01) (Reports of the European Commission of Human Rights and Judgments of the European Court of Human Rights with regard to the Republic of Lithuania). The Lithuanian translation of the Court's judgment has also been transmitted to the Supreme Court of Lithuania and to the Office of the Prosecutor General of Lithuania.

In 2002 the applicants lodged requests with the Supreme Court of Lithuania to re-open the criminal proceedings against them. On 27 June 2002, the Supreme Court quashed the Court of Appeal's judgment of 29 April 1998 and its judgment of 20 October 1998 by which the applicants had been initially convicted and referred the case to the Court of Appeal for re-examination. The proceedings are still pending.

As regards the question of possible liberation of the applicants pending the outcome of the new proceedings the Government notes that the first two applicants, Mr Birutis and Mr Byla, cannot be released as they are presently serving another prison sentence: the Kaunas Regional Court, by a decision of 3 November 1997, convicted them of disorderly conduct and of having obstructed the functioning of the penitentiary and sentenced them to thirteen years' imprisonment. Accordingly, both applicants are currently serving their sentences in the Alytus prison. As for the third applicant, Mr Janutenas, on 3 May 2001, he was provisionally released on probation before the expiry of the sentence (under Article 54 of the Criminal Code).

Statutory basis, length and review of detention on remand

Resolution ResDH (2004) 56 adopted on 29 September 2004 concerning the judgment of the European Court of Human Rights of 31 July 2000 in the case of Jecius v. Lithuania

In this case, the Court held that the former Article 50-1 of the Lithuanian Code of Criminal Procedure, which permitted preventive detention in connection with three specific offences, was incompatible with Article 5 § 1 of the Convention. This Article permits arrest and detention on remand only in the context of criminal proceedings for alleged past offences. The Court also found that there had been no valid domestic detention order or any other "lawful" basis for his remand in custody. In addition, it ruled that the authorities had not adduced "relevant and sufficient" reasons to justify the applicant's continued detention on remand for almost fifteen months. The Court also held that there had been a violation of Article 5 § 4 because the domestic courts had refused to examine the applicant's challenges to the lawfulness of his detention on remand, by reference to a statutory bar then in force.

Following the Court's judgment, the Government of the respondent State took the following measures:

On 30 June 1997, the Law on preventive detention, which was at the basis of the violations in this case, was abolished. On 17 March 2002 the Lithuanian Parliament (Seimas) adopted the new Code of Criminal Procedure, which entered into force on 1 May 2003. Article 122 (1) of the new Code (version of the law last amended on 8 July 2004) sets out an exhaustive list of grounds on which the measure of detention on remand may be imposed. Such a measure is thus ordered by a competent judge if there is a reasonable cause to believe that a suspect could (a) abscond or hide from the competent investigation officer, prosecutor or court, (b) obstruct the course of the proceedings, or (c) commit new offences. Article 122 (6) read together with Article 123 (4) of the Code provide that when ordering detention on remand, the grounds and motives shall be specified in the detention order.

As to the question of the reasonableness of the length of detention on remand, the relevant provisions of the Code of Criminal Procedure have also been amended. Article 127 (1) of the new Code now provides for an initial term of three months, which may be extended to six and eighteen months, depending on the complexity of the case and gravity of the offence. According to paragraph 4 of the same Article read together with Article 125 (1) p. 4, the judge issuing an order extending the detention on remand shall specify therein the grounds and reasons justifying the continued detention.

Furthermore, according to the present Article 130 of the new Code, complaints challenging the lawfulness of detention on remand can be filed by the detained person or his defence counsel during both pre-trial investigation and court proceedings. Such complaints have to be examined in a public hearing, to which the arrested person and his/her defence counsel, or only his/her defence counsel, have to be summoned. In addition, following the entry into force of the current version of Article 372, paragraph 4, of the Code of Criminal Procedure (Law No. VIII-956, 10 December 1998), this provision no longer contains a prohibition on appeals against first-instance court decisions imposing, modifying or revoking detention on remand.

The Lithuanian translation of the European Court's judgment has been published in the annual compendium *Europos ûmogaus teisiu komisijos ir Eropos ûmogaus teisiu teismo spredimai bylose prieš Lietuvos Respublika* (1997/01/01- 2000/01/01) (Reports of the European Commission of Human Rights and Judgments of the European Court of Human Rights with regard to the Republic of Lithuania) and disseminated to the Supreme Court and to the Office of the Prosecutor General of Lithuania. Having regard to the direct effect granted by the Supreme Court to the European Convention on Human Rights and the European Court's jurisprudence (as evidenced by the Supreme Court's decisions of 29 April 2003 – case No. 2K-322/2003 – or of 16 September 2003 – case No. 2K-504/2003), the Government con-

siders that the new legislative provisions will be interpreted and applied by the authorities in conformity with the Convention.

Russia

Right to a fair trial: "tribunal established by law"

Resolution ResDH (2004) 46 adopted on 6 July 2004 concerning the judgment of the European Court of Human Rights of 4 March 2003 in the case of Posokhov v. the Russian Federation

The case concerns the applicant's conviction for large-scale smuggling by a court composed of a judge and two lay judges. The applicant complained that the latter had been acting as lay judges prior to his trial for longer than the maximum 14 days per year, contrary to section 9 of the Lay Judges Act, and that their names had not been drawn by lot, in breach of section 5 of the Act.

The following information was provided by the Government of the respondent State:

Individual measures

As regards the applicant's situation, the Government recalls that on 22 May 2000, the Neklinovskiy District Court of the Rostov Region found the applicant guilty of being accessory in the avoidance of customs duties and of abuse of office. On 2 July 2001, the same court dispensed him from serving the sentence because the case was time-barred. No further individual measures thus appear required and indeed the applicant has not requested any such measures.

General measures

As an interim general measure to ensure implementation of this judgment of the European Court, on 17 April 2003, the Deputy Chairman of the Supreme Court sent to the chairmen of all domestic courts a circular drawing their attention to the Court's findings and drawing their attention to the need to secure compliance with rules on participation of lay judges in criminal trials until 1 January 2004, when the new Code of Criminal Procedure would be fully in force. This Code, which entered into force on 1 July 2002, repealed the Lay Judges Act of 10 January 2000, which was at issue in the present case, but in accordance with the transitional provisions of the new Code, lay judges could sit in criminal cases until 1 January 2004.

In addition, the judgment of the European Court was published in translation in *Rossijskaia Gazeta* on 8 July 2003.

The importance of respecting the European Convention, particularly in this kind of cases, was also stressed by the Plenum of the Supreme Court on 10 October 2003, in a decision concerning the application by the courts of common jurisdiction of the principles and norms of international law and international treaties entered into by the Russian Federation. In particular, while referring to Article 47 of the Russian Constitution and Article 6, paragraph 1, of the Convention, this decision reiterates that the composition of courts should in each civil and/or criminal case be established by law. Furthermore, this decision recalls that the Convention, as interpreted in the light of the case law of the European Court, is part of the national legal order and its provisions prevail over every other legislative provision.

On 1 January 2004 the new Code of Criminal Procedure became fully operational, providing a full solution to the problems raised by the Court's judgment.

Switzerland

Lack of remedy regarding detention

Final Resolution ResDH (2004) 57 adopted on 12 October 2004 concerning the judgment of the European Court of Human Rights of 26 September 1997 in the case of R.M.D. v. Switzerland

The following information was provided by the Government of the respondent State:

The Government of Switzerland recalled that the European Convention on Human Rights and the judgments of the European Court of Human Rights have direct effect in Swiss law (see among others Resolutions DH (94) 77 in the case of *F.* v. *Switzerland* and DH (2000) 122 in the case of *Hertel* v. *Switzerland*). Thus, cantonal Courts will provide, as both the Convention and the Court's judgment require, a full and effective examination of each application lodged with them challenging the lawfulness of an individual's detention on remand, when the person concerned is transferred to another canton before the end of the proceedings (not least on account of the respect owed by the receiving canton's courts to the decisions of the courts of the canton of origin). The Federal Court, as final instance of appeal, ensures compliance with this requirement of Article 5, paragraph 4, of the Convention.

In order to ensure the direct application of the present judgment, it has been published in the journal *Jurisprudence des autorités administratives de la Confédération* (JAAC, 1997, No. 102) (Case law of the administrative authorities of the Confederation) and sent to the Federal Court, to cantonal departments of justice and to cantonal courts. In addition, the report of the *Conseil fédéral* on the activities of Switzerland within the Council of Europe in 1997 (*Feuille fédérale* 1998, p. 505 ss., p. 511) mentions the judgment.

Furthermore, in 2002 the Federal Department of Justice consulted the cantons in order to determine whether similar cases had occurred since the judgment of the European Court and it was found that no new, similar or identical case had occurred.

Committee of Ministers

The Committee of Ministers is the Council of Europe's decision-making body. It comprises the Foreign Affairs Ministers of all the member states, who are represented, outside the two annual ministerial sessions, by the Permanent Representatives of the member states to the Council of Europe. It is a place where national approaches to problems facing European society can be discussed on an equal footing, and where Europe-wide responses to such challenges are formulated. Guardian, together with the Parliamentary Assembly, of the Council's fundamental values, it also monitors member states' compliance with their undertakings.

Recommendation Rec (2004) 10

Recommendation of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorders – 22 September 2004

Recognising that one in four people will suffer from mental health problems at some stage during their lifetime, the Committee of Ministers adopted a Recommendation aimed at protecting the dignity and human rights of those suffering from mental disorders.

The Recommendation outlines the rights of people who are hospitalised or treated – especially when this happens without their consent – and describes measures aimed at protecting those people. It also sets out the conditions in which involuntary measures which could give rise to ethical problems – such as psychosurgery – should be used.

Finally, and for the first time, the Recommendation defines specific requirements relating to the quality assurance and monitoring of mental health services, and specifies that the patients involved should play a part in that process.

Statement on the length of judicial proceedings in Italy

On 30 September 2004, the Ministers' Deputies adopted a press release on the length of judicial proceedings in Italy. The full text of this statement is reproduce on page 14, under the section "Italy", of this *Bulletin*.

Adopted texts

Treaties – or conventions – are binding legal instruments for the Contracting Parties.
Recommendations to member states are not binding and generally deal with matters on which the Committee has agreed a common policy.
Resolutions are mainly adopted by the Committee of Ministers in order to fulfil its functions under the European Convention on Human Rights, the European Social Charter and the Framework Convention for the Protection of National Minorities.
Declarations are usually adopted only at the biannual ministerial sessions.
Decisions of the Ministers' Deputies, issued as public documents, are published after each of their meetings. Taken in the name of the Committee of Ministers, they contain the full text of the decisions and adopted texts as well as the terms of reference of committees.
Working documents relate to questions formally addressed during the Committee of Ministers meetings.

Presidency of the Committee of Ministers

Norwegian chairmanship takes stock of six months' work at the head of the Committee of Ministers

The Norwegian chairmanship presented a summary of its activities at the head of the Council of Europe's executive body, from 13 May to 10 November 2004, recalling that its main priorities were the reinforcement of human rights and legal co-operation, the strengthening of synergy in European co-operation and developing the role of the Council of Europe with regard to conflict prevention. The Norwegian chairmanship also underlined the work carried out with respect to the Summit of Heads of State and Government, which will take place in Warsaw in May 2005, the opening for signature of Protocol No. 14 to the European Convention on Human Rights, and a High Level Seminar on Reform of the European Human Rights System in Oslo on 18 October. The text of the conclusions added that Norway's commitment to the Council of Europe will continue in the months and years ahead. Norway also pledged its full support for Poland, which has taken up the Presidency of the Committee of Ministers for the period from November 2004 to May 2004.

Working documents

CM (2004) 209 / 16 November 2004
High Level Seminar on Reform of the European Human Rights System – 18 October 2004, Oslo, Norway – Conclusions of the Seminar.

CM (2004) 189 / 22 October 2004
Written questions by members of the Parliamentary Assembly to the Committee of Ministers – g. Written question No. 459 by Mr Masson: "Respect of Human Rights at the Guantanamo base".

CM (2004) 175 / 08 October 2004
Written questions by members of the Parliamentary Assembly to the Committee of Ministers – a. Written question No. 457 by Mr Masson: "Decisions of the European Court of Human Rights concerning human rights violations in the member states".

CM (2004) 168 / 24 September 2004
Written questions by members of the Parliamentary Assembly to the Committee of Ministers – Written question No. 454 by Mr Masson: "United Kingdom: Courts' use of evidence obtained under torture and legal possibilities for the indefinite detention of foreigners without charge or trial".

CM (2004) 167 / 21 September 2004
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) – 14th General Report on the CPT's activities covering the period 1 August 2003 to 31 July 2004.

CM (2004) 163 / 08 September 2004
Written Questions by members of the Parliamentary Assembly – d. Written Question No. 453 by Mr Masson: "Conditions of detention of nationals of Council of Europe member states held in Guantanamo Bay by the United States".

CM (2004) 161 / 08 September 2004
Written questions by members of the Parliamentary Assembly to the Committee of Ministers – a. Written question No. 450 by Mr Masson: "Europe's prisons".

Parliamentary Assembly

"The Parliamentary Assembly is a unique institution, a gathering of parliamentarians, from more than forty countries, of all political persuasions, responsible not to governments, but to our own consensual concept of what is right to do."
Lord Russell-Johnston, former President of the Assembly

2004 Session – Meeting of the Standing Committee of the Assembly (Oslo, 7 September 2004)

Meeting in Oslo, at the invitation of the Norwegian Parliament, the Standing Committee examined, *inter alia*, reports on *the Council of Europe and the conflict in Northern Ireland; Internet and the law; ratification of protocols and withdrawal of reservations and derogations made in respect of the European Convention on Human Rights; challenges facing the European audiovisual sector*.

Ratification of the protocols to the European Convention on Human Rights and withdrawal of reservations to the Convention

Recommendation 1671 and Resolution 1391 on the ratification of protocols and withdrawal of reservations and derogations made in respect of the European Convention on Human Rights

The entire body of Convention law must be ratified by all member states and reservations must not be of a permanent nature

The Assembly intends doing everything in its power to make sure that all the additional protocols to the Convention be ratified. Presently, with the exception of those amending the supervisory machinery established under the Convention, none of the thirteen protocols to the Convention have been ratified by all member states.

Furthermore, the Assembly has noted that some member states, which entered reservations to the Convention, have not withdrawn them several years after the ratification, when such reservations should be confined to the period required to bring the legislation which motivated the reservation in conformity with the Convention.

The Assembly also deems necessary that the Committee of Ministers examine carefully any notification of derogation received under Article 15.

It welcomes the developing jurisprudence of the European Court of Human Rights with respect to its jurisdiction over reservations and derogations and the approach taken in cases involving inadmissible reservations or unlawful derogations.

Fourth part of the 2004 session of the Assembly (4-8 October 2004)

In the field of human rights, highlights of the session included an urgent debate on *the challenge of terrorism in Council of Europe member states* as well as a joint debate on *the political, human rights and humanitarian situation in the Chechen Republic*. Others items included *the functioning of democratic institutions in Serbia and Montenegro and in Azerbaijan, the honouring of obligations and commitments by Armenia, new concepts to evaluate the state of democratic development, as well as women's participation in elections.*

Texts adopted by the Assembly

Recommendations contain proposals, addressed to the Committee of Ministers, the implementation of which is within the competence of governments.

Resolutions embody decisions by the Assembly on questions it is empowered to put into effect or expressions of view for which it alone is responsible.

Opinions are mostly expressed by the Assembly on questions put to it by the Committee of Ministers on important matters such as the admission of new member states, the adoption of draft conventions, implementation of the Social Charter.

Orders are generally instructions from the Assembly to one or more of its committees.

The challenge of terrorism in Council of Europe member states

Recommendation 1677 and Resolution 1400 on the challenge of terrorism in Council of Europe member states

"Every act of terror must be considered a crime against humanity"

Following the terrorist attack in Beslan, the President of the Assembly, Peter Schieder, expressed Europe's full solidarity with the Russian people and authorities, and made the following statement :

"Terrorism has no justification and it must be considered abhorrent, unacceptable and a crime against humanity. It must be fought with all legal means available.

First of all, international co-operation against terrorism needs to be strengthened. At present, the legislative framework is fragmented and incomplete and so far the United Nations has not been able to conclude a comprehensive convention on the fight against terrorism.

It is therefore more urgent than ever to begin work without delay on the elaboration of a comprehensive Council of Europe Convention on Terrorism. The future convention should include a definition of terrorism and terrorist acts so that terrorist offences cannot in any way be justified as politically motivated acts.

As the Assembly has consistently stated in the past, action against terrorism must at all times be consistent with the fundamental freedoms and human rights which it is designed to protect. The Assembly strongly supports the Council of Europe's plan of action against terrorism based on three cornerstones: strengthening legal action against terrorism, safeguarding fundamental values and addressing the causes of terrorism.

Simultaneous debates on the fight against terrorism in the national parliaments of our member States could help to generate the necessary political momentum. The Assembly intends to discuss in depth further action that the Council of Europe can take to fight terrorism during its October part-session."

In the Recommendation and Resolution adopted at the end of an urgent debate, on 6 October 2004, the Assembly called for a "common legal area" for action against terrorism in Europe, including a single definition of terrorism in the laws of the Council of Europe's 46 member states and greater protection for witnesses or *pentiti* testifying against terrorists.

The Assembly said that "it is unacceptable and dangerous to apply double standards to terrorists, depending on their alleged motives," as "there are no 'good' or 'bad' terrorists."

The parliamentarians also stressed that the fight against terrorism must always be compatible with human rights: "Wherever those rights are violated this weakens the international coalition in the fight against terrorism, and drives new supporters into the hands of the terrorists."

The Assembly's other proposals included:

– operational co-operation against terrorism between special services, police and justice systems;
– looking into the possibility of extending the European Union's arrest warrant to all Council of Europe member states;
– widening the jurisdiction of the International Criminal Court to include some terrorist offences.

The Assembly also called for action to remove "deep-rooted causes" providing fertile soil for terrorism, such as poverty, exclusion, inequality, despair, widespread disorder, impunity for serious human rights violations and crimes, and blatant disregard for the rights of national minorities.

Chechen Republic

Recommendation 1678 and Resolution 1402 on the political situation in the Chechen Republic: measures to increase democratic stability in accordance with Council of Europe standards; Recommendation 1679 and Resolution 1403 on the human rights situation in the Chechen Republic; Resolution 1404 on the humanitarian situation of the Chechen displaced population

Towards the establishment of a Round Table to follow human rights, democracy and the rule of law in Chechen Republic

The Assembly agreed to proceed with the establishment of a Round Table to organise an exchange of views with political parties and politicians from the Chechen Republic and the federal authorities of Russia in order to follow developments regarding human rights, democracy and the rule of law in the Republic, but decided that those "who refuse to recognise the territorial integrity of the Russian Federation, and who declare terrorism a method to achieve goals" cannot be participants.

Following a joint debate on three separate reports on the political, human rights and humanitarian situations in the Republic, with the participation of Chechen President Alu Alkhanov, the Assembly said that the priority for the political leadership in Chechnya should be "to ensure that the law is enforced and applied throughout the Chechen Republic equally to everybody".

1. Approving a report on the political situation in Chechnya, it proposed the collection of weapons, greater efforts to fight organised crime, increased support for civil society in the region and transparency for the media.
2. In a separate report on the human rights situation, the Assembly condemned all criminal acts constituting serious human rights violations committed by all sides, in particular the horrific bloodbath of the Beslan hostage-taking. "There can be no excuse whatsoever for any such attacks on innocent civilians", the parliamentarians said. However, they added that the continuing massive violations of human rights in the Republic were "by far the most serious human rights issue in any of the Council of Europe's member states", and declared that the credibility of the whole

organisation depended on its ability to convince the Russian Federation to meet its commitments. Russia should end the "climate of impunity" which still prevailed in Chechnya, the Assembly said, urging that there be "a clear signal" from the highest political level that all security and law enforcement officials must respect human rights. It also expressed outrage that serious crimes had been committed against people applying to the European Court of Human Rights.

3. Turning to the humanitarian situation of the Chechen displaced population, the Assembly said this remained "very precarious". Undue pressure would be used in order to encourage displaced Chechens to return to Chechnya even if the situation in the Republic remains extremely complicated. However, all unsatisfactory refugee camps in Ingushetia had closed and that cottages were being constructed, and there is development in the process of paying compensation to families who lost property. The parliamentarians called for the convening of a consultative conference on how resources for rebuilding in Chechnya could be used most effectively.

"The Council of Europe is opposed to the death penalty in all its forms"

"The case for sparing the life of the cold-blooded murderers of Beslan, Moscow, Madrid, and elsewhere is neither easy nor a popular one to make. But the Council of Europe is opposed to the death penalty in all its forms, even for the most appalling criminals of this world. Human rights apply to every one of us, without exception", was the message of Council of Europe Parliamentary Assembly President to participants of the second World Congress against the death penalty, organised in Montreal from 6-9 October.

"A growing sense of insecurity risks making us forget about human rights or at least making large concessions for what we think is in our own interest. Torturing or executing human beings can never be in our interest. Civilised societies should allow neither the death penalty nor torture, no matter what its motives are. The end doesn't justify the means. No concessions may be made when it comes to fighting terrorism.

The victims deserve that the guilty be duly prosecuted and punished in a manner worthy of a civilised society under the rule of law. Moreover, it is essential that their family and friends should be given recognition, respect and support by the State. This applies to Beslan as it applies elsewhere", said Peter Schieder.

Working documents of the Oslo meeting and the October session:

- Document 10282: Report by the Committee on Migration, Refugees and Population on the humanitarian situation of the Chechen displaced population
- Document 10276: Report by the Political Affairs Committee on the situation in the Chechen Republic: measures to increase democratic stability in accordance with Council of Europe standards
- Document 10283: Report by the Committee on Legal Affairs and Human Rights ons the human rights situation in the Chechen Republic
- Document 10312: Report by the Political Affairs Committee on the challenge of terrorism in Council of Europe member states
- Document 10316: Report by the Committee on Legal Affairs and Human Rightsvon the ratification of protocols and withdrawal of reservations and derogations made in respect of the European Convention on Human Rights

Web Site of the Assembly: http://assembly.coe.int

The Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent institution within the Council of Europe that aims to promote awareness of and respect for human rights in its member states.

Mandate

The Commissioner for Human Rights has been entrusted with the following tasks by the Committee of Ministers:

- promoting the effective observance and full enjoyment of human rights, as embodied in the various Council of Europe instruments;
- identifying possible shortcomings in the law and practice of member states with regard to compliance with human rights;
- promoting education in and awareness of human rights in member states;
- encouraging the establishment of human rights structures in member states where such structures do not exist.

Visits

The Russian Federation

Between July and October 2004, Mr Gil-Robles conducted an official visit to the Russian Federation.

First Part (15-30 July 2004)

During these two weeks, the Commissioner went to six of the seven Federal Districts of the Russian Federation, with stops in Khabarovsk, Irkutsk, Ekaterinburg, Nizhny Tagil, Kazan and Krasnodar.

During the course of his visit, the Commissioner paid particular attention to the administration of justice, police behaviour, prison conditions, the respect for human rights within the armed forces, freedom of the press, the protection of minorities, the fight against racism and xenophobia, the rights of foreigners, the enjoyment of social rights and the situation of vulnerable groups such as children, women, the elderly and the disabled.

In accordance with his usual practice, the Commissioner began his visits to each region with a long discussion with representatives of civil society and NGOs. He also met with religious authorities. The Commissioner visited around 40 sites in and around all six cities including police stations, courts, prisons, military units, orphanages and young offenders institutions, hospitals, psychiatric institutions, old people's homes, media outlets and universities.

During the course of his visit the Commissioner and the Federal Ombudsman, Mr. Vladimir Lukin, hosted a Conference in Irkutsk on 19-20 July to promote the institution of the regional ombudsman in the Siberian and Far East Regions.

Second Part (20-29 September 2004)

During this visit, the Commissioner travelled to the autonomous region of Khanti-Mansiisk and to the Northern Caucasus, including the Chechen Republic and Beslan (North Ossetia), the site of the tragic hostage crisis of 1-3 September 2004, before returning to Moscow for meetings with the federal authorities, including the Ministers of the Interior, Defence, Justice and the Head of the Presidential Administration.

In the light of recent developments in the Chechen Republic, the Commissioner organised a conference on the respect for human rights in the Republic on 24 September. Representatives of the federal and regional authorities and a broad range of civil society representatives adopted a final declaration which is available on the Commissioner's website. This declaration stresses the importance of the respect for human rights in the reconstruction of the Republic and strongly condemns the violations that continue to take place, notably with respect to forced disappearances and the impunity that generally surrounds such acts. The declaration calls for the consolidation of the role of civil society in the reconstruction of the Republic and the creation of an Ombudsman institution at the level of the Republic (a provisional Ombudsman was appointed in October).

The Commissioner's report on the respect for human rights in the Russian Federation will be presented to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, and made public at the beginning of 2005.

Seminars

First Round-table of European Regional Ombudsmen

(Barcelona, 2-3 July 2004, organised in collaboration with the Ombudsman of Catalunya, within the framework of the 2004 Universal Cultural Forum in Barcelona)

The Round-table, organised in the light of an informal meeting of Regional Ombudsman in Paris in October 2003, sought to encourage the creation of a network for sharing experience and information on the regional Ombudsmen of Europe with a view to reinforcing this important institution across the continent. More than a hundred regional Ombudsmen from across Europe as well as several experts attended. The main themes discussed were the division of competences between national and regional Ombudsmen and the role of the latter in enforcing the rights to housing and decent environment.

Seminar on Human Rights and Regional and Local Authorities

(Barcelona, 5-6 July 2004, organised in collaboration with the Congress of Regional and Local Authorities of the Council of Europe and the City Council of Barcelona, within the framework of the 2004 Universal Cultural Forum in Barcelona)

The seminar sought to analyse the role and responsibility of local authorities in the promotion and protection of human rights, because citizens have the most direct contact with administrative services and structures at this level. The enjoyment of political, social, economic and cultural rights were all examined, as well as the right to education.

Publications

On 8 July 2004, the Commissioner presented his reports on the respect for human rights in Luxembourg, Denmark and Sweden to the Committee of Ministers.

All three reports pay particular attention to the rights of foreigners and asylum seekers, the functioning of the judiciary and the police, detention conditions and trafficking in human beings.

The reports are available on the website of the Office of the Commissioner for Human Rights.

Internet site: http://www.coe.int/commissioner/

Law and policy – Intergovernmental co-operation in the human rights field

One of the Council of Europe's vital tasks in the field of human rights is the creation of legal policies and instruments. In this, the Steering Committee on Human Rights plays an important role. The CDDH is the principal intergovernmental organ answerable to the Committee of Ministers in this area, and to its different expert committees.

Steering Committee for Human Rights (CDDH)

The CDDH met once during the period covered by this *Bulletin*, in November 2004. Its agenda included the following items.

Guidelines on the protection of victims of terrorist acts

The CDDH examined in detail the draft guidelines presented by the Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER). After discussion, it adopted the *Guidelines* as they appear in the addendum to the meeting report (document CDDH (2004) 030) and submitted them to the Ministers' Deputies for consideration.

The *Guidelines on the protection of victims of terrorist acts*, although distinct from the *Guidelines on human rights and the fight against terrorism* adopted by the Committee of Ministers in 2002, are nevertheless complementary with the latter; and both sets of guidelines should be published in a single volume in due course. A seminar on the implementation of the *Guidelines* is scheduled for June 2005.

Access to official documents

The CDDH discussed the follow-up to Recommendation Rec (2002) 2 on access to official documents. Working through its Group of Specialists on Access to Official Information (DH-S-AC), it has the responsibility of reviewing the existing national legislations in the field with a view to examining the advisability of elaborating a legally binding instrument on access to official documents, accompanied by an explanatory report.

A questionnaire had been sent to member states on the implementation at national level towards the end of 2003. Thirty-six replies had been received. They showed that the majority of member states had enacted legislation in this field, but that implementation was occasionally problematic. The majority of experts concluded that it would now be an appropriate time to begin work on such an instrument, which could facilitate the implementation at national level of the provisions of Recommendation Rec (2002) 2, especially if it were to include a monitoring mechanism.

They considered that it should be a convention – a traditional convention, a framework convention or some other type of treaty. The CDDH shared the view of the DH-S-AC that an additional protocol to the European Convention on Human Rights would not be appropriate.

In conclusion, the CDDH requested new terms of reference from the Committee of Ministers in order to negotiate a separate legally binding instrument establishing the principles on access to official documents based on Recommendation Rec (2002) 2.

The recommendation and a practical guide to its implementation have been published by the Council of Europe.

Environment and human rights

The Committee of Experts for the Development of Human Rights (DH-DEV) summarised progress made in the task of drawing up, in accordance with its terms of reference, a manual or guidelines aimed at summing up the case law of the Court concerning environmental matters and underlining the need to strengthen environmental protection at national level.

The choice of manual or guidelines had not yet been decided, but would be made at DH-DEV's April meeting. It had been agreed that the approach taken should be a human rights one. The instrument should therefore concentrate exclusively on those rights already within the Convention which may be affected adversely by environmental factors. In view of the relatively few examples in the case law, it was decided that reference should be made also to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention, United Nations Economic Commission for Europe).

Prevention of torture

Geneviève Mayer, Deputy Executive Secretary of the Committee for the Prevention of Torture, presented the current approach being taken by the CPT in relation to the Optional Protocol to the United Nations Convention against Torture, recently adopted by the United Nations. The protocol sets up a monitoring mechanism providing for a sub-committee on prevention, mandated to visit places of detention in contracting states and make recommendations to the national authorities.

The CDDH took note with interest of the initiatives being taken by the CPT with a view to ensuring complementarity between the mechanisms of the two instruments, and to clarifying the most efficient manner in which the work of the two bodies can be carried out.

Accession by the European Union to the European Convention on Human Rights

The CDDH noted that the European Commission, whose members had just taken up their functions, had not yet adopted any official position on this matter. Taking into account the firm commitment to accession contained in the new Constitutional Treaty, no change in the Commission's positive attitude towards accession could be expected. While accession by the European Union would only be legally possible following the entry into force of the EU's Constitutional Treaty, preliminary negotiations could already take place as soon as the new Commission was ready to participate in them. The entry into force of Protocol No. 14 to the ECHR would not necessarily be a precondition for accession. Subject to the decisions to be taken by the European Union, the CDDH decided that the Working Group on the Legal and Technical Issues of EU Accession to the European Convention on Human Rights (GT-DH-EU) would be convened as soon as the necessary political endorsement for negotiations had been given, probably after next year's Council of Europe summit.

Reform of the European Convention on Human Rights

The CDDH is required, by June 2005, to adopt an initial preliminary report taking stock of the implementation of several major recommendations concerning the national aspect of the reform and also addressing sensitive issues relating to the supervision of the execution of certain judgments of general interest.

Publications

In September 2004 the Directorate General of Human Rights published two books resulting from the work of the CDDH in the reform procedure. Both are published in the informal series "Applying and supervising the ECHR".

Protocol No. 14 to the European Convention on Human Rights and explanatory report

ISBN 92-871-5555-0

Guaranteeing the effectiveness of the European Convention on Human Rights: Collected texts

As well as the full text of Protocol No. 14 and the explanatory report, this volume includes the final report of the CDDH concerning its work in the reform procedure, together with the relevant recommendations and resolutions of the Committee of Ministers.

Seminar

On 18 October 2004 the Norwegian government organised a high-level seminar in Oslo entitled "Reform of the European human rights system". Among the speakers were Crown Prince Haakon of Norway; Jan Peterson, Norwegian Foreign Minister; Luzius Wildhaber, President of the European Court of Human Rights; and Pierre-Henri Imbert, Director General of Human Rights at the Council of Europe.

The proceedings of the seminar are also published in the series "Applying and supervising the ECHR" by the Directorate General of Human Rights.

European Social Charter

The European Social Charter sets out rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by the States Parties. This legal instrument was revised in 1996 and the Revised European Social Charter, which came into force in 1999, is gradually replacing the initial 1961 treaty.

Signatures and ratifications

Forty-five member states of the Council of Europe have signed the 1961 Charter or the 1996 revised Charter. To date, 36 states have ratified one or the other of these two instruments. A simplified chart of signatures and ratifications of the Chart and related treaties is appended.

About the Charter

Rights guaranteed by the Charter

The Social Charter guarantees human rights in such diverse areas as housing, health, education, employment, legal and social protection, the movement of persons and non-discrimination.

The European Committee of Social Rights

The European Committee of Social Rights (ECSR) ascertains whether countries have honoured the undertakings set out in the Charter. It is composed of fifteen members elected by the Council of Europe's Committee of Ministers.

A monitoring procedure based on national reports

Every year the States Parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter. The Committee examines the reports and decides whether or not the situations are in conformity with the Charter. Its decisions ("conclusions") are published every year. If a state takes no action on a Committee decision to the effect that it does not comply with the Charter, the Committee of Ministers addresses a recommendation to that state, asking it to change the situation in law or in practice.

Effects of the application of the Charter in the various states

During the year, the Committee took note of a number of positive developments in the States Parties and it elaborated on its case law:

– it asked States to prohibit all forms of exploitation of children in relation to trafficking or to children being on the street – including for example begging, pick pocketing, servitude or the removal of organs – and to adopt measures which further prevent risks of exploitation through the use of new information technologies (Article 7 § 10);
– it extended the social, legal and economic protection of families to Roma families (Article 16).

Furthermore, the Committee pointed out that the "notion of worker" in the sense of the Charter covers not only active workers but also persons exercising rights resulting from work such as retired or unemployed persons (Article 5), and that the introduction of a minimum service requirement in essential sectors may be considered in conformity with the Charter (Article 6 § 4).

A collective complaints procedure

Under a protocol opened for signature in 1995, which came into force in 1998, complaints of violations of the Charter may be lodged with the European Committee of Social Rights. Once the complaint has been declared admissible, a written procedure is set in motion, with an exchange of documents between the parties. A public hearing may be held. The Committee then takes a decision on the merits of the complaint, which it forwards to the parties concerned and the Committee of Ministers in a report, which is made public. Finally, the Committee of Ministers adopts a resolution, by which it may recommend that the state concerned take specific measures to bring the situation into line with the Charter.

Collective complaints Nos. 14-23

During the reference period, the ECSR took decisions on the merits of ten collective complaints (Nos. 14-23). Five of them were lodged by the World Organisation against Torture (OMCT) which alleged that Greece, Ireland, Italy, Portugal and Belgium do not respect Article 17 of the Social Charter since, in these countries, the law does not effectively prohibit all forms of *corporal punishment of children* nor does it prohibit any other form of *degrading punishment or treatment of children*, and it does not provide adequate sanctions in penal or civil law. The European Committee of Social Rights "does not consider that there can be any educational value in corporal punishment of children…" and it "considers that Article 17 requires a prohibition in legislation against any form of violence against children whether at school, in other institutions, in their home or elsewhere. It furthermore considers that any other form of degrading punishment or treatment of

children must be prohibited in legislation and combined with adequate sanctions in penal and civil law" (General introduction to Conclusions XV-2).

The decisions regarding complaint Nos. 14- 2 had not yet been made public. Under complaint No. 23 (*Syndicat Occitan de l'Education* v. *France*), the Committee underlined that, with respect to Article 5 (*right to organise*), a requirement of representativity must not amount, directly or indirectly, to a hindrance to the formation of trade unions. With respect to Article 6 § 1 (*right to joint consultation*), any requirement of representativity must not excessively limit the possibility of trade unions to participate effectively in consultation. The Committee also pointed out that in order to comply with Articles 5 and 6 § 1, the criteria of representativity must be prescribed by law, they must be objective and reasonable and subject to judicial review. In conclusion it found that there was no violation of the aforementioned provisions of the Charter.

Internet site: http://www.coe.int/T/E/Human_Rights/Esc/

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Article 3 of the European Convention on Human Rights provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". This Article inspired the drafting of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The CPT was set up under the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Secretariat of the CPT forms part of the Council of Europe's Directorate General of Human Rights. The CPT's members are elected by the Committee of Ministers of the Council of Europe from a variety of backgrounds: lawyers, doctors – including psychiatrists – prison and police experts etc.

The CPT's task is to examine the treatment of persons deprived of their liberty. For this purpose, it is entitled to visit any place where such persons are held by a public authority; apart from periodic visits, the Committee also organises visits which it considers necessary according to circumstances (i.e., ad hoc visits). The number of ad hoc visits is constantly increasing and now exceeds, proportionally speaking, that of periodic visits.

The CPT may formulate recommendations to strengthen, if necessary, the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment.

Visits

Co-operation and confidentiality

The CPT is guided by these two main principles. Co-operation with the national authority is at the heart of the Convention, since the aim is to protect persons deprived of their liberty rather than to condemn states for abuses.

Periodic visits

During the period covered by the present *Bulletin*, the CPT carried out three periodic visits:

Moldova

During this visit, the Committee's third periodic visit to Moldova, the CPT's delegation examined developments as regards the treatment of persons detained by the police and the situation in prisons; it also reviewed how prisoners suffering from tuberculosis are treated.

Poland

During its third periodic visit to Poland, the CPT's delegation reviewed measures taken by the Polish authorities in response to the Committee's recommendations made after the visit in 2000, in particular as regards the safeguards offered to persons detained by the police, the treatment of foreign nationals held under the aliens legislation and prison conditions.

Serbia and Montenegro

This was the first time that the CPT examined the treatment of persons deprived of their liberty in Serbia and Montenegro. The CPT's delegation visited a variety of establishments, including prisons, both civil and military, police stations, a centre for the detention of aliens and psychiatric hospitals.

Ad hoc visits

"former Yugoslav Republic of Macedonia"

The main purpose of the visit was to review measures taken following findings made by the Committee during previous visits. The delegation focused on the treatment of persons detained by law enforcement agencies – and the related issue of accountability – and the situation in remand prisons.

Reports to the governments following visits

After each visit, the CPT draws up a report which sets out its findings and includes recommendations and other advice, on the basis of which a dialogue is developed with the state concerned. The Committee's visit report is, in principle, confidential; however, almost all states choose to waive the rule of confidentiality and publish the report.

Armenia

Report on CPT's visit in October 2002 and Government's responses (published on 28 July 2004)

This report is the first published on Armenia.

The CPT concluded that people detained by the police in Armenia run a significant risk of being ill-treated. The Commitee therefore recommended that a high priority be

given to professional training for police officers, including in modern investigation techniques.

The report also draws attention to overcrowding in prisons and the shortage of activities for inmates. Furthermore, the CPT calls for urgent steps to improve the conditions in which people sentenced to life imprisonment are being held at Nubarashen Prison, and highlights major deficiencies at Nubarashen Republican Psychiatric Hospital.

In their official responses to the report, the Armenian authorities refer to measures which have been taken to improve police training and to step up the control of police activities. The authorities also announce a reduction of the prison population, following the adoption of a new Criminal Code, and highlight measures aimed at improving conditions at the Nubarashen facilities.

"The former Yugoslav Republic of Macedonia"

Report on CPT's visit in November 2002 and Government's response (published on 9 September 2004)

The CPT's delegation reviewed developments concerning the treatment of persons deprived of their liberty by law enforcement agencies, as well as legal remedies in cases involving allegations of ill-treatment. The CPT concluded that the problem of ill-treatment of persons in police custody remained a serious problem, and made detailed recommendations on the obligations of judges and prosecutors to ensure that allegations of police ill-treatment are properly investigated and pursued.

The CPT also recommended that steps be taken as a matter of urgency to radically improve regime activities in remand prisons throughout the country and identified specific measures to be implemented in Skopje (Bardovci) Psychiatric Hospital and Demir Kapija Special Institution for mentally disabled persons.

In their response, the national authorities described the various measures taken to implement the CPT's recommendations. They highlighted in particular the provision of professional training to new police officers, the adoption of a new Code of Police Ethics, efforts to surmount the problem of inadequate staffing levels in the prison system, as well as steps to improve the situation in the fields of mental health and social care.

CPT's General Report

The CPT publishes its annual general report in September, along with a general report on its activities. The 14th General Report was published on 21 September 2004; it covers the following subjects:

Terrorism

In the Report's Preface, the CPT emphasises that there can be no exceptions to the prohibition of ill-treatment. States are under the obligation to take the measures needed to counter terrorist acts; however, the fight against terrorism must never be allowed to degenerate into acts of torture or inhuman or degrading treatment.

The CPT sets forth that any state that authorises or condones acts, by its officials, which amount to either "torture" or "inhuman or degrading treatment" diminishes its standing in the eyes of the international community, and that the same can be said of a state that makes use of statements which officials of another country have obtained through resort to such acts.

In a number of its General Reports, the CPT has described some of the substantive issues which it pursues when carrying out visits to places of deprivation of liberty. The Committee hopes in this way to give a clear advance indication to national authorities of its views regarding the manner in which persons deprived of their liberty ought to be treated and, more generally, to stimulate discussion on such matters. These chapters constitue a document called "CPT standards".

With the chapter on impunity, developments on the following questions have been brought together: police custody, imprisonment, health care services in prisons, foreign nationals detained under aliens legislation, involuntary placement in psychiatric establishments, juveniles and women deprived of their liberty, and training of law enforcement personnel.

Combating impunity

The CPT sets out guidelines for combating impunity within police or prison services, military authorities, etc.

The CPT is in favour of promoting a culture of "zero-tolerance" for ill-treatment, where the right thing to do is report perpetrators in the workplace. Moreover, allegations of torture and ill-treatment must lead to effective investigations and appropriate sanctions must be imposed if they are proven. The CPT also makes clear that no one must be left in any doubt about the commitment of state authorities to combating impunity: "When necessary, those authorities should not hesitate to deliver the clear message that there must be 'zero tolerance' of torture and other forms of ill-treatment".

Enforcement of CPT's activities within Kosovo: Agreement with the UNMIK

The 14th Report includes the text of an Agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe.

Under the Agreement, the CPT enjoys access to any place within Kosovo where persons are deprived of their liberty by an authority of UNMIK, under exactly the same conditions as those laid down in the Convention. Before the CPT can commence its activities in Kosovo, similar arrangements of a binding nature must be concluded with the North Atlantic Treaty Organisation (NATO) on the subject of places of detention in Kosovo administered by KFOR. Consultations are currently underway with NATO authorities on this subject.

Internet site: http://cpt.coe.int/

The Framework Convention: ensuring the rights of minorities is more than ever needed

Interview with Asbjørn Eide, President of the Advisiory Committee on the Framework Convention for the Protection of National Minorities

What are the main challenges national minorities are faced with in Europe today?

They are different in different parts of Europe. This is an important point to make. There is however a common concern throughout Europe and that is the need to better integrate and ensure equality for the Roma population.

In western Europe, the main problems are related to the so-called "new minorities", i.e people who have more recently immigrated, and the need to ensure their proper integration and to combat xenophobia, which unfortunately is a problem in a number of countries and which has to be addressed.

In central and eastern Europe, particularly those countries in a process of transition, they also have to find a way of relating to the different "old minorities" because the new state formations, particularly in federations which have broken up, such as the Soviet Union or former Yugoslavia, are faced with the new challenge of making the country a common home for the different groups living on its territory. That is a difficult task, but states are working on it, and things are certainly much better than they were about a decade ago in those parts of the world.

Do you think that the mechanism of the Framework Convention is adequately equipped to tackle these challenges?

The Framework Convention can work well if we can build up enough trust between the Advisory Committee, national authorities and the minorities concerned. This can only be achieved over time, and we have come a long way so far. Governments recognise the importance of our work and minorities are also coming to realise that the Advisory Committee takes their concerns seriously. We are therefore facilitating a dialogue between governments and minorities.

In some countries, certain minorities are not recognised by the state. What is the Advisory Committee doing to change this and what achievements have been made in this domain?

Yes, that is a problem. There are some situations where the minorities are not fully recognised for a variety of reasons. And of course we, as an Advisory Committee, have to base all our initiatives on international law, which means that we must respect the reservations made by countries with respect to which minorities they want the Framework Convention to apply to. But we are also entitled to discuss such reservations with governments, to question whether the limitations they have made are reasonable and whether they could abolish the limitations or, in other words, include further groups.

In addition to that, there are parts of the Framework Convention (Article 6) which make it possible to deal with all minorities, whether they are recognised or not, because it deals with questions of ensuring tolerance in society and reciprocal understanding between the different groups living on the territory of the state, whether they are formally recognised as minorities or not. Article 6 of the Framework Convention gives us the opportunity to open broad discussions on minorities, at least under that particular Article. So we have developed what we call an "article-by-article" approach to the question of which minorities are covered.

The Framework Convention is often described as a pan-European instrument. Some states of western Europe such as France, Greece or Belgium, however, have not yet ratified this treaty. In your opinion, could such a situation lead to the creation of double standards within Europe when it comes to minority protection?

It would certainly be desirable to have as many ratifications as possible. I am nevertheless impressed that we have 35 ratifications to date, and there are at least three more likely to come in the near future. This is already a high number, considering the relatively short time since it entered into force. So it has developed in quite a positive manner. Countries in western, southern, northern and eastern Europe have ratified the Framework Convention. There are a few exceptions, and it is my hope that these exceptions will change. I don't think, however, that there's any justification for saying that there are double standards, because we do seriously address both western and eastern Europe. This is a fundamental difference from the situation which existed during the League of Nations, for instance, when only some countries of eastern Europe were addressed.

In situations like in Kosovo, where we have seen some ethnic violence reappearing recently, what could be the role of a mechanism such as the Framework Convention?

The implementation of the Framework Convention in Kosovo is a particularly interesting case. Kosovo is nominally still part of Serbia and Montenegro, but it is *de facto* not under its control. The government of Serbia and Montenegro does not even pretend that it has any possibility of influence over matters concerning the protection of minorities in Kosovo. Kosovo is presently under the administration of the United Nations (UNMIK). The Agreement signed between the Council of Europe and UNMIK in August 2004 is setting a very interesting precedent: UNMIK is expected to prepare a report on the implementation of the Framework Convention by February 2005 and the Advisory Committee will establish, after it has visited Kosovo, the degree to which the United Nations is taking appropriate care of the minorities there.

The Kosovo situation is a very difficult one, tensions are high, there has been a resurgence of violence and it is one of the Council of Europe's most important tasks to see what it can do in order to make Kosovo a common home for the different groups in that area.

Framework Convention for the Protection of National Minorities

The particularity of Europe is the diversity of traditions and cultures of European peoples with shared values and a common history.

About the Framework Convention

The Framework Convention is the first legally binding multilateral instrument concerned with the protection of national minorities in general. Adopted by the Council of Europe in 1995, it came into force on 1 February 1998.

The Framework Convention's aim is to protect national minorities within the respective territories of the Parties. The Convention seeks to promote the full and effective equality of national minorities by creating appropriate conditions enabling them to preserve and develop their culture and to retain their identity, whilst fully respecting the principles of territorial integrity and political independence of states. The principles contained in the Framework Convention have to be implemented through national legislation and appropriate governmental policies.

The Convention sets out principles to be respected as well as goals to be achieved by the Contracting Parties, in order to ensure the protection of persons belonging to national minorities. The substantive provisions of the Framework Convention cover a wide range of issues, *inter alia*: non-discrimination, the promotion of effective equality; the promotion of the conditions necessary for the preservation and development of the culture and preservation of religion, language and traditions; freedoms of assembly, association, expression, thought, conscience and religion; access to, and use of, media; freedoms relating to language, education and transfrontier contacts; participation in economic, cultural and social life; participation in public life and prohibition of forced assimilation.

Monitoring of the implementation of the Framework Convention takes place on the basis of state reports due every five years. The Committee of Ministers may in the interim also request ad hoc reports. State reports are made public by the Council of Europe upon receipt. They are examined first by the Advisory Committee of 18 independent experts, which may also receive information from other sources, as well as actively seek additional information and have meetings with governments and others.

The Advisory Committee adopts opinions on each of the state reports, which it transmits to the Committee of Ministers. The latter body takes the final decisions in the monitoring process in the form of country-specific conclusions and recommendations. Unless the Committee of Ministers decides otherwise in a particular case, the opinions, conclusions and recommendations are all published at the same time. Nevertheless, State Parties may publish the opinion concerning them, together with their written comments if they so wish, even before adoption of the respective conclusions and possible recommendations by the Committee of Ministers.

Since the second monitoring cycle started in February 2004, the Advisory Committee has received nine State Reports (as of 1 November 2004). It also adopted two second cycle Opinions with respect to Croatia and Liechtenstein in September 2004 (not yet public).

The Committee of Ministers adopted its Resolutions on the implementation of the Framework Convention with regard to Serbia and Montenegro, Poland, Spain and Azerbaijan, presented below in accordance with their date of adoption.

Committee of Ministers conclusions and recommendations

Serbia and Montenegro

On 17 November 2004, the Committee of Ministers adopted Resolution ResCMN (2004) 12 on the implementation of the Framework Convention by Serbia and Montenegro.

The Committee of Ministers noted progress on the legislative front, especially regarding education and language rights, but also observed that a number of shortcomings remain to be effectively addressed. It stressed the need to clarify the legal status of the legislation concerning national minorities adopted by the former federal authorities and found that the implementation of the relevant norms is at times hampered by the limited co-operation between the different authorities of the State Union and its constituent states and by the lack of clarity as to their relative competences.

Inter-ethnic relations remain problematic and efforts to build tolerance and trust must be reinforced throughout the State Union. The Committee of Ministers held that non-discrimination and full and effective equality, especially regarding the Roma, have yet to be achieved and that the variations between regions in terms of the efforts made to protect the languages and cultures of national minorities should be addressed in order to ensure that the legislation on the protection of national minorities is consistently implemented.

The full text of the Resolution, Opinion and Report relating to Serbia and Montenegro can be found on the Minorities Internet site.

Poland

The Committee of Ministers adopted Resolution ResCMN (2004) 10 on the implementation of the Framework

Convention by Poland on 30 September 2004. The corresponding Opinion was made public on the same day.

The Committee of Ministers commended the efforts made by the Polish authorities, in particular through the recent adoption of the Programme for the Roma Community in Poland, but pointed to a number of shortcomings with regard to the use of minority languages in public life. It also found that there was scope for improvement in the media sector, the geographical cover of broadcasting for dispersed minority populations and the involvement of national minorities in the preparation of programmes intended for them.

It concluded by underlining problems related to Roma and the implementation of the newly adopted Programme for the Roma and called for further action to address acts of discrimination and ensure equal opportunities for access to education.

The full text of the Resolution, Opinion and Report relating to Poland can be found on the Minorities Internet site.

Spain

The Committee of Ministers adopted Resolution ResCMN (2004) 11 on the implementation of the Framework Convention by Spain on 30 September 2004. The corresponding Opinion was made public on the same day.

The Committee of Ministers recognised that the promotion of cultural identities and diversity in Spain is facilitated by the high degree of decentralisation and broad powers exercised by the Autonomous Communities and, although the Roma are not officially recognised as a national minority in Spain, it noted with satisfaction that they are entitled to the protection of the Framework Convention.

It commended the efforts made to improve the situation of the Roma, but nevertheless found that considerable socio-economic differences persist between a large number of Roma and the rest of the population. It therefore called for more appropriate measures to promote the full and effective equality of Roma in such fields as employment, health, housing, access to public services and education and measures geared towards awareness-raising and the prevention of discrimination.

The full text of the Resolution, Opinion and Report relating to Spain can be found on the Minorities Internet site.

Azerbaijan

On 13 July 2004, the Committee of Ministers adopted Resolution ResCMN (2004) 8 on the implementation of the Framework Convention by Azerbaijan.

The Committee of Ministers welcomed the progress made in Azerbaijan in opening up the personal scope of application of the Framework Convention to a wide range of minorities, in keeping with the long history of cultural diversity of the country. The Nagorno-Karabakh conflict, however, has tarnished the general spirit of tolerance in Azerbaijan, as tension increases as a result of the displacement of a large number of people.

The global situation with regard to human rights – including concerns in terms of freedom of expression and the process of registration of NGOs – has a negative impact on the protection of national minorities and must be given priority by the authorities.

The Committee of Ministers noted with concern that some provisions of the 2002 Law on the State Language limit the legal guarantees relating to the protection of minority languages. It therefore called for a higher degree of protection in such fields as minority language education and use of minority languages in public life.

It concluded by recommending that the consultation structures for representatives of national minorities be further developed to improve the participation of minorities in decision making.

The full text of the Resolution, Opinion and Report relating to Azerbaijan can be found on the Minorities Internet site.

Agreement with UNMIK

Council of Europe to monitor minority rights in Kosovo

The Council of Europe and the United Nations Interim Administration Mission in Kosovo (UNMIK) concluded an agreement related to the Framework Convention for the Protection of National Minorities in Kosovo on 23 August 2004, whereby the Committee of Ministers, assisted by the Advisory Committee on the Framework Convention, will monitor the implementation of this treaty in Kosovo.

Following the submission of a report by UNMIK (due in February 2005), the Advisory Committee on the Framework Convention will adopt its Opinion and the Committee of Ministers its conclusions concerning the adequacy of the measures taken to give effect to the principles of the Framework Convention.

The agreement emphasises that UNMIK is not a Party to the Framework Convention and that the future status of Kosovo shall be determined in accordance with Security Council resolution 1244 (1999), which provides the legal basis of the interim administration of Kosovo.

New terms of reference for DH-MIN

The Committee of Ministers adopted new specific terms of reference of the Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN) on 5 November 2004.

The terms of reference lay out DH-MIN's role as a Committee of Experts subordinate to the Steering Committee for Human Rights (CDDH). As such, its role will be to:

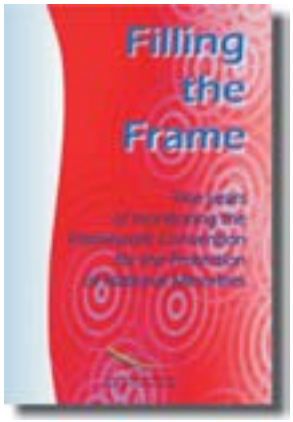
- act as a forum for the exchange of information, views and experience on policies and good practices for the protection of national minorities;
- carry out a reflection on transversal issues relevant to member states, drawing on the results of the monitoring mechanism of the Framework Convention;
- identify and assess ways of further enhancing European co-operation on issues relating to the protection

of national minorities and to make proposals for consideration by the CDDH;
- prepare draft opinions for the CDDH.

The terms of reference are to be reviewed before 31 December 2006.

Publications

Filling the Frame: five years of monitoring the Framework Convention for the Protection of National Minorities

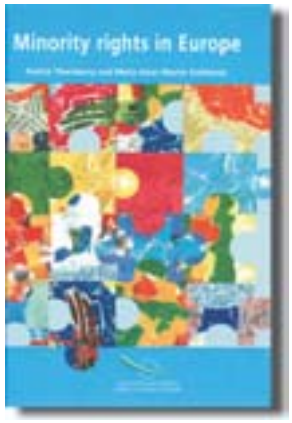


Proceedings of the Conference held on 30-31 October 2003 to mark the 5th anniversary of the entry into force of the Framework Convention for the Protection of National Minorities. Available in English and French.

English: ISBN 92-871-5473-2 (2004)
French: ISBN 92-871-5472-4 (2004)

Internet site: http://www.coe.int/minorities/

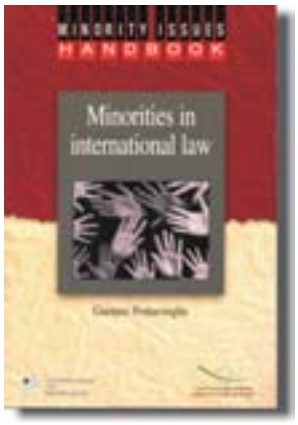
Minority Rights in Europe



This book presents an account and an evaluation of the principal standards and mechanisms created by the Council of Europe and other international organisations. The critical standpoint centres on the nature and scale of the challenge presented to an organisation by the "ethnic question". Available in English only.

English: ISBN 92-871-5366-3 (2004)

Minorities in International Law



With a focus on developments following the end of the cold war, this publication, the first in the *Handbook on Minority Issues* series, offers a comprehensive and critical overview of the issue of minorities in international law. Available in English and French.

English: ISBN 92-871-4773-6 (2002)
French: ISBN 92-871-5416-3 (2004)

European Commission against Racism and Intolerance

The European Commission against Racism and Intolerance was born as a result of the first Summit of Heads of State and Government of the member states, in 1993, with a task: to combat racism, xenophobia, anti-Semitism and intolerance at European level and from the perspective of the protection of human rights.

The European Commission against Racism and Intolerance (ECRI) is an independent human rights body monitoring issues related to racism and racial discrimination in the forty-six member states of the Council of Europe. ECRI's programme of activities comprises three aspects:

- country-by-country approach;
- work on general themes;
- activities in relation to civil society.

Country-by-country approach

In the framework of this approach, ECRI closely examines the situation concerning racism and intolerance in each of the member states of the Council of Europe. Following this analysis, ECRI draws up suggestions and proposals addressed to governments as to how the problems of racism and intolerance identified in each country might be overcome.

In 2003, ECRI started work on the third round of this country-specific monitoring. The third round reports focus on implementation, by examining whether and how effectively the recommendations contained in ECRI's previous reports have been implemented. The reports also examine specific issues, chosen according to the situation in each country, in more depth in each report.

In autumn 2004 ECRI carried out contact visits to Albania, Croatia, Poland, Sweden and the United Kingdom, as part of the process of preparing third round reports on these countries. The aim of ECRI's contact visits is to obtain as detailed and complete a picture as possible of the situation regarding racism and intolerance in the respective countries, prior to the elaboration of the country reports. The visits provide an opportunity for ECRI's rapporteurs to meet officials from ministries and national public authorities, as well as representatives of NGOs and anyone concerned with issues falling within ECRI's remit.

Work on general themes

General Policy Recommendations

ECRI's General Policy Recommendations are addressed to all member states and cover important areas of current concern in the fight against racism and intolerance, which are often pinpointed in the course of ECRI's country monitoring work. They are intended to serve as guidelines which policy-makers are invited to use when drawing up national strategies to combat racism and intolerance.

Anti-Semitism

ECRI General Policy Recommendation No. 9 on the fight against anti-Semitism (adopted on 25 June 2004)

On 20 September 2004, ECRI organised a public presentation in Paris of its last General Policy Recommendation, which is dedicated to the fight against anti-Semitism. ECRI had decided to draw up this General Policy Recommendation in response to the worrying increase in the dissemination of anti-Semitic ideas and in acts of violence perpetrated against members of the Jewish communities and their institutions in a significant number of European countries.

Following a wide consultation process involving Jewish organisations, human rights NGOs, academics and other experts in the field, ECRI adopted this General Policy Recommendation at its plenary session in June 2004.

ECRI's General Policy Recommendation No. 9, which is the first legal text adopted by a European institution on the specific issue of combating anti-Semitism, sets out a comprehensive set of legal and policy measures to help Council of Europe member states fight against anti-Semitism, which, it stresses, should be systematically included in a broader policy against all forms of racism. Such measures include strengthening criminal law provisions, stepping up awareness-raising efforts in schools and the systematic collection of information about anti-Semitic offences.

ECRI's recommendation is launched at a presentation in Paris on 20 September in the presence of the media and experts in the field

Relations with civil society

Round table, Athens, 18 November 2004

On 18 November 2004 ECRI organised a Round Table in Greece. Held in Athens, it forms part of a series of national round tables held in the member states of the Council of Europe and organised in the framework of ECRI's Programme of Action on Relations with Civil Society.

The reasoning behind this Programme of Action is that racism and intolerance can only be successfully countered if civil society is actively engaged in this fight: tackling racism and intolerance requires not only action on the part of governments (to whom ECRI's recommendations are addressed), but also the full involvement of civil society. ECRI attaches great importance to ensuring that its anti-racism message filters down to the whole of civil society, and also to involving the various sectors of society in an intercultural dialogue based on mutual respect.

The main themes of ECRI's Round Table in Greece were: ECRI's Third Report on Greece (published on 8 June 2004); racism and xenophobia in public discourse and in the public sphere; national legislation to combat racism and racial discrimination; and the situation of immigrants in Greece. These issues were discussed with representatives of the responsible government agencies and victims of discrimination in the light of ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and the new draft Greek anti-discrimination law. During the discussion on racism and xenophobia in public discourse, the Greek Anti-Racism Charter was presented as a tool to fight racism at the local level. Discussions also focused on the future creation of a specialised body for combating racism and intolerance and the implementation of the Action Plan for the Integration of Immigrants in Greece. The Round Table aimed to involve all the relevant actors in an open debate in order to identify ways of better implementing existing initiatives and also to provide the impetus for further reform in Greece.

Ethnic data collection

Consultation meeting with NGOs on the issues of ethnic data collection

NGOs are key partners of ECRI in the fight against racism and intolerance. ECRI's aim is to build up a network of NGOs working in partnership with ECRI, including through the exchange of information, organising meetings and consultations. Since the adoption of its Programme of Action on relations with civil society, ECRI has been holding regular consultation meetings with a selected number of international NGOs in order to have comprehensive exchanges of views about topics of particular interest. ECRI's most recent consultation meeting with international human rights and anti-racist NGOs was held on 20 October 2004 in Strasbourg and concentrated on the issue of ethnic data collection.

Publications

ECRI General Policy Recommendation No. 9 on the fight against anti-Semitism, adopted on 25 June 2004

Conference "All different, all equal: ECRI, 10 years of combating racism"
Strasbourg, 18 March 2004: Conference Highlights, July 2004

Internet site: http://www.coe.int/ecri/

Equality between women and men

Since 1979, the Council of Europe has been promoting European co-operation to achieve real equality between the sexes. The Steering Committee for Equality between Women and Men (CDEG) has the responsibility for co-ordinating these activities.

Trafficking in human beings

6th meeting of CAHTEH

(28 September-1 October, Strasbourg)

Hearing with NGOs

The CAHTEH organised a hearing with the NGOs Amnesty International, Gender Equality Grouping and the Coalition Against Trafficking in Women (CATW/MAPP) in order to hold an exchange of views. At the request of these NGOs, the CAHTEH took the exceptional measure of allowing them to participate in the entire meeting.

Draft Convention on action against trafficking in human beings

The Committee also continued the second reading of the draft Convention on action against trafficking in human beings, examining provisions on the definition and identification of victims, a recovery and reflection period, residence permits and repatriation of victims, substantive criminal law, investigations, international co-operation and a monitoring mechanism.

The CAHTEH agreed to the following provisional calendar regarding the draft Convention and its development:

Dec. 2004	Plenary meeting of CAHTEH, adoption of draft Convention;
Jan. 2005	Submission of draft Convention to the Parliamentary Assembly, which will examine it during its session in January and draft an opinion;
Feb. 2005	Meeting of CAHTEH to examine the opinion of the Parliamentary Assembly;
Mar. 2005	Submission to Committee of Ministers and adoption;
Apr./May 2005	Opening for signature at the 3rd Summit of Heads of State and Government of the Council of Europe.

Balanced participation

Seminar on women in diplomacy

(Strasbourg, 28-29 October 2004)

The Seminar on Women in diplomacy was organised as part of the follow-up to Recommendation Rec (2003) 3 on balanced participation of women and men in political and public decision making. Fifteen women diplomats (including ambassadors) and members of Permanent Representations of member states to the Council of Europe attended. No men participated with the exception of the Rapporteur on equality of the Committee of Ministers and the Head of the Department "Minorities, Media, Equality".

During this seminar, participants discussed stereotypes and obstacles to equal opportunities and women's participation in diplomacy, their contribution to the promotion of equality and to the implementation of gender mainstreaming. They examined their contribution to conflict prevention, the co-operation between women diplomats and NGOs and the setting-up of a network of women diplomats.

The diplomats who participated underlined how women's entrance to the diplomatic world had been long and difficult and how obstacles and stereotypes persisted at international and national levels. For example, there are only 10 women ministers of foreign affairs in the world. The seminar pinpointed education and the fight against stereotypes as the main tools for changing behaviour in this field.

Intercultural and inter-religious dialogue in conflict prevention

The Group of Specialists on the role of women and men in intercultural and inter-religious dialogue for conflict prevention, peacebuilding and democratisation (EG-S-DI) wrapped up its programme in November 2004. The Group had been set up in order to carry out the follow-up to the 5th Ministerial Conference on Equality between Women and Men (Skopje, 22-23 January 2003) entitled *Democratisation, conflict prevention and peacebuilding: the perspectives and the roles of women*.

It carried out a study on the role of women and men in the framework of intercultural and inter-religious dialogue as a contribution to conflict prevention, peacebuilding and democratisation. It defined the notions of intercultural and inter-religious dialogue and the respective roles women and men can play in this area. It also identified obstacles to the participation of women in such dialogue, proposed mechanisms intended to overcome them and drafted a guide containing good practices relating to the role of women and men in such initiatives.

Gender mainstreaming

Gender mainstreaming in schools

Each year, the CDEG organises a meeting of the Informal Council of Europe Network on Gender Mainstreaming based on one of the themes of the Council of Europe's work. These meetings are intended to promote the integration of gender mainstreaming strategies into the Council of Europe's projects. This year, for the 4th meeting of the network, the theme chosen was that of gender mainstreaming in schools. Specialists met to share their experience and good practice and to examine the report prepared by the Group of Specialists on promoting gender mainstreaming in schools (EG-S-GS).

In particular, they examined the results of a survey, conducted among teachers, both women and men, in 15 member states. It concluded that co-education was not neutral in its impact, that attitudes to equality issues differed depending on individuals' social, cultural and ethnic backgrounds, that few teachers really grasped the concept of gender mainstreaming in schools and that stereotypical ideas still prevailed. Based on these results and the contributions of member states regarding the influence of the cultural, family, social and economic environment on the behaviour of school children, the group drew up a strategy for the promotion of gender mainstreaming in schools covering all the decision-making and implementation levels. Examples of good practice were used to illustrate the application of this strategy.

Finally, proposals were made for the training of educational staff in the framework of the European Year of Citizenship through Education (2005) on the way school management and teachers' attitudes can contribute to promoting gender mainstreaming.

Gender budgeting

The Group of Specialists on Gender Budgeting (EG-S-GB) finished its work in October 2004. It had been given the task of preparing a report in order to raise awareness of this new concept in member states and to provide concrete examples illustrating the different ways in which gender budgeting makes it possible to better target the use of resources.

Definition: Gender budgeting is the application of gender mainstreaming to the budgeting process. This implies an evaluation of existing budgets in terms of gender issues at all levels of the budgeting process and a reallocation of revenues and expenses with a view to promoting the equality of women and men.

The Group also defined this concept, based on the idea that a budget is not neutral and should be rooted in the social reality to which it must apply; in other words, women and men have different needs that a budget can address differently. This is one specific application of gender mainstreaming strategies which can increase the effectiveness of public spending. The European Commission's Advisory Committee for Equal Opportunities adopted this definition in an opinion on budgets which take the question of gender into account.

The Group of Specialists, working on the basis of this concept, prepared a report laying out guidelines illustrated with examples of good practice in order to assist states in the drafting of budgets which take gender into account and in undertaking reforms in this area.

Violence against women

Group of Specialists on the protection of women against violence (EG-S-MV)

The three following projects were used as a basis for the EG-S-MV's draft final report, which will be studied and adopted at the next meeting of the CDEG (the Steering Committee for Equality between Women and Men) in June 2005.

Study on the protection of women against violence

When beginning its work, the Group of specialists EG-S-MV decided that it was necessary to establish a point of reference for future work. A questionnaire was therefore sent to the authorities of member states in order to collect information on the situation regarding violence against women and any existing plans of action against such violence. An analysis of the responses and the plans of action received was carried out by an expert-consultant. This analysis was a starting point for the Group and makes up the first part of the draft final report.

Draft monitoring framework based on indicators

One of the main tasks of the Group of Specialists was to draw up a list of 20 significant indicators to be used in following the evolution of the implementation of the Recommendation on the protection of women against violence. The list was adopted at the Group's fifth and final meeting (13-15 October 2004). The indicators selected are intended to provide a clear picture of the situation in member states with regard to this Recommendation and its implementation.

The Group of Specialists also adopted explanatory notes relating to each indicator and made proposals as to how the indicators should be used, interpreted, applied and reviewed in the future.

Good practices

The EG-S-MV also continued its work on examples of good practices in order to assist member states in adopting policies and concrete measures by providing examples of what has been achieved, in different ways, in some member states regarding plans of action, legislation, shelters for victims, etc.

It was decided not to select "best" practices, for the simple reason that the same measures cannot be applied uniformly in all member states, but rather some innovative examples reflecting the diversity of the Council of Europe member states.

Other business

Seminar: Therapeutic treatment of men perpetrators of violence within the family

This seminar is to be held in Strasbourg on 18-19 November 2004, as a follow-up to the seminar organised in June 2003 entitled *Measures dealing with men perpetrators of domestic violence*.

Equality website: http://www.coe.int/equality/

Study: Forced marriages in the member states of the Council of Europe

This study is being carried out by a French expert consultant with a view to determining what role forced marriages can play in violence against women.

Trafficking website: http://www.coe.int/trafficking/

Co-operation and human rights awareness

In the field of human rights, the future presents many challenges for the Council of Europe. In response, it has set up co-operation programmes, with both new and old member states, non-governmental organisations and professional groups.

The Human Rights Co-operation and Awareness Division is part of the Directorate General of Human Rights. It is responsible for co-operation activities with member states and candidate countries of the Council of Europe as regards the European Convention on Human Rights (ECHR), and also on a wide range of other issues, including Ombudsmen and abolition of the Death Penalty.

It aims promoting:

- knowledge of the ECHR and other human rights standards of the Council of Europe,
- the adoption of legislation compatible with the ECHR,
- the development of good practices in domestic application of human rights standards, including the execution of the judgments of the European Court of Human Rights.

The details and highlights of two prominent programmes currently managed by the Division can be found below.

Study session on the rights of people with mental disabilities

(Strasbourg, 18-20 October 2004)

The Council of Europe and the Mental Disability Advocacy Center (MDAC) organised the first study session for persons involved in providing legal assistance to people with mental disabilities. The study session aimed at providing participants with practical examples of how to use the ECHR in applications from people with mental disabilities. This first ever international study session was a follow-up to a number of in-country training activities which the Council of Europe and the MDAC, in conjunction with local partners, had organised in some 15 eastern and south eastern European countries since 2001.

Many participants were aware of the Convention rights but not of their potential application to their country's mental health systems, or of the European Committee for the Prevention of Torture's remit to visit and report on psychiatric institutions.

Lawyers conducted interactive sessions focussing on:

- relevant articles and procedures of the ECHR;
- practical information about how to use ECHR arguments in domestic courts and how to apply to the European Court of Human Rights;
- a moot trial exercise on the ECHR;
- lectures on other Council of Europe bodies and instruments (in particular the CPT and the Bioethics Convention).

The study session was facilitated by Council of Europe staff (lawyers from the European Court of Human Rights), and experienced MDAC experts from Central, Eastern and Southern Europe involved in defending people with mental disabilities in Council of Europe member states.

It was suggested that a similar event should be organised next year in October for another group of lawyers involved in providing legal assistance to people with mental disabilities. Participants' unanimous feedback emphasised their increased understanding of the mandates of the ECHR and the CPT, including practical knowledge of the ways in which they could invoke these standards at domestic level in the future.

Moldova: European Commission/ Council of Europe Joint Programme to continue democratic reforms

(operational from 16 September 2004 to 15 September 2006)

One of the main objectives of this Joint programme, agreed to in September 2004, is to strengthen human rights protection at national level, notably in the domestic courts. It thus aims to encourage judges to apply the ECHR in their decisions including the underlying principles of the case law of the European Court of Human Rights. It equally concerns lawyers responsible for bringing cases of human rights violations before the national courts and the potential reference to the provisions of the ECHR.

The programme foresees in-depth training for legal professionals (judges, prosecutors, lawyers), police officers and civil servants, targeting legally-trained participants from outside the capital.

The training will focus on the rights protected by the ECHR and the technical application of this Convention in law and practice at the national level. Furthermore, training on appeal procedures before the European Court of Human Rights will be given to lawyers in Moldova. The training sessions will focus on the following subjects: the right to a fair trial, the execution of judicial decisions, the right to respect of property, the prohibition of torture, the right to assembly and freedom of religion.

The Council of Europe will organise the sessions in co-operation with national partners (the Judicial Training

Centre, the Bar Association, the NGO "Lawyers for Human Rights") and with the Information Office of the Council of Europe in Chisinau.

The Joint Programme will support the Government Agent in Moldova [*note: the Government agent is responsible for representing the state before the European Court of Human Rights and for the follow-up of the execution of that court's judgments, and can make proposals to the government in order to improve the protection of fundamental rights*]. The legal advisers of the Agent's office will be trained in ECHR procedures and in the role of the Government Agent in protecting human rights.

Finally, in co-operation with the Government Agent, a conference on the execution of the judgments of the European Court of Human Rights will also be organised for civil servants and judges directly involved in these issues – this conference taking place in a crucial period when Moldova is called to fully implement legislation on a national level in response to a first series of judgments against it:

- the case of the *Metropolitan Church of Bessarabia and others* [awaiting Moldova's adoption of legislation on freedom of religion complying with the requirements of the European Convention on Human Rights],
- the case of *Ilascu and others* v. *Moldova and Russia* [referred to in this *Bulletin* in the chapter on the European Court of Human Rights, page 3],
- a series of cases relating to non-enforcement of court judgments in favour of the applicants.

Awareness website: http://www.coe.int/awareness/

"Police and Human Rights" Programme

The aim of the Programme is to enable all police officers in the member states of the Council of Europe to gain sound knowledge of human rights standards and to acquire skills that will enable them to apply these standards as they go about their daily duties.

- A Joint Initiative with the European Commission entitled "Police, Professionalism and the Public" in *Turkey* was finalised in 2004. A voluntary contribution from the Danish authorities will ensure that training activities in Turkey continue in 2005.
- A similar Joint Programme with the European Commission for *Ukraine* also came to an end in 2004. A voluntary contribution from the United Kingdom will assist in the continuation of training projects, in particular, for the Mobile Inspection Groups mandated to carry out random inspections of temporary detention premises.
- A third and final Joint Programme with the European Commission for the *Russian Federation* was completed in 2004. A contract has been signed with Ireland which will support training activities in Russia from 2005 to 2007.
- In addition to these programmes, and with the aid of voluntary contributions from various countries, the Police and Human Rights Programme carried out numerous training activities in *Albania*, *Georgia*, *Moldova*, *Serbia and Montenegro* and "*The former Yugoslav Republic of Macedonia*".

Appendix
Simplified chart of ratifications of European human rights treaties

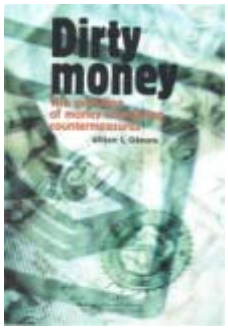
	European Convention on Human Rights	**Protocol No. 1**	**Protocol No. 4**	**Protocol No. 6**	**Protocol No. 7**	**Protocol No. 12**	**Protocol No. 13**	**Protocol No. 14**	**European Social Charter**	**European Social Charter (Revised)**	**CPT**	**FCNM** Framework Convention for the Protection of National Minorities
Albania	02.10.96	02.10.96	02.10.96	21.09.00	02.10.96	**26.11.04**				14.11.02	02.10.96	28.09.99
Andorra	22.01.96			22.01.96			26.03.03			**12.11.04**	06.01.97	
Armenia	26.04.02	26.04.02	26.04.02	29.09.03	26.04.02					21.01.04	18.06.02	20.07.98
Austria	03.09.58	03.09.58	18.09.69	05.01.84	14.05.86		12.01.04		29.10.69		06.01.89	31.03.98
Azerbaijan	15.04.02	15.04.02	15.04.02	15.04.02	15.04.02					**02.09.04**	15.04.02	26.06.00
Belgium	14.06.55	14.06.55	21.09.70	10.12.98			23.06.03		16.10.90	02.03.04	23.07.91	
Bosnia and Herzegovina	12.07.02	12.07.02	12.07.02	12.07.02	12.07.02	29.07.03	29.07.03				12.07.02	24.02.00
Bulgaria	07.09.92	07.09.92	04.11.00	29.09.99	04.11.00		13.02.03			07.06.00	03.05.94	07.05.99
Croatia	05.11.97	05.11.97	05.11.97	05.11.97	05.11.97	03.02.03	03.02.03		26.02.03		11.10.97	11.10.97
Cyprus	06.10.62	06.10.62	03.10.89	19.01.00	15.09.00	30.04.02	12.03.03		07.03.68	27.09.00	03.04.89	04.06.96
Czech Republic	18.03.92	18.03.92	18.03.92	18.03.92	18.03.92		**02.07.04**		03.11.99		07.09.95	18.12.97
Denmark	13.04.53	13.04.53	30.09.64	01.12.83	18.08.88		28.11.02	**10.11.04**	03.03.65		02.05.89	22.09.97
Estonia	16.04.96	16.04.96	16.04.96	17.04.98	16.04.96		25.02.04			11.09.00	06.11.96	06.01.97
Finland	10.05.90	10.05.90	10.05.90	10.05.90	10.05.90		**29.11.04**		29.04.91	21.06.02	20.12.90	03.10.97
France	03.05.74	03.05.74	03.05.74	17.02.86	17.02.86				09.03.73	07.05.99	09.01.89	
Georgia	20.05.99	07.06.02	13.04.00	13.04.00	13.04.00	15.06.01	22.05.03	**10.11.04**			20.06.00	
Germany	05.12.52	13.02.57	01.06.68	05.07.89			**11.10.04**		27.01.65		21.02.90	10.09.97
Greece	28.11.74	28.11.74		08.09.98	29.10.87				06.06.84		02.08.91	
Hungary	05.11.92	05.11.92	05.11.92	05.11.92	05.11.92		16.07.03		08.07.99		04.11.93	25.09.95
Iceland	29.06.53	29.06.53	16.11.67	22.05.87	22.05.87		**10.11.04**		15.01.76		19.06.90	
Ireland	25.02.53	25.02.53	29.10.68	24.06.94	03.08.01		03.05.02	**10.11.04**	07.10.64	04.11.00	14.03.88	07.05.99
Italy	26.10.55	26.10.55	27.05.82	29.12.88	07.11.91				22.10.65	05.07.99	29.12.88	03.11.97
Latvia	27.06.97	27.06.97	27.06.97	07.05.99	27.06.97				31.01.02		10.02.98	
Liechtenstein	08.09.82	14.11.95		15.11.90			05.12.02				12.09.91	18.11.97
Lithuania	20.06.95	24.05.96	20.06.95	08.07.99	20.06.95		29.01.04			29.06.01	26.11.98	23.03.00
Luxembourg	03.09.53	03.09.53	02.05.68	19.02.85	19.04.89				10.10.91		06.09.88	
Malta	23.01.67	23.01.67	05.06.02	26.03.91	15.01.03		03.05.02	**04.10.04**	04.10.88		07.03.88	10.02.98

	European Convention on Human Rights	Protocol No. 1	Protocol No. 4	Protocol No. 6	Protocol No. 7	Protocol No. 12	Protocol No. 13	Protocol No. 14	European Social Charter	European Social Charter (Revised)	CPT	FCNM Framework Convention for the Protection of National Minorities
Moldova	12.09.97	12.09.97	12.09.97	12.09.97	12.09.97					08.11.01	02.10.97	20.11.96
Monaco												
Netherlands	31.08.54	31.08.54	23.06.82	25.04.86		**28.07.04**			22.04.80		12.10.88	
Norway	15.01.52	18.12.52	12.06.64	25.10.88	25.10.88			**10.11.04**	26.10.62	07.05.01	21.04.89	17.03.99
Poland	19.01.93	10.10.94	10.10.94	30.10.00	04.12.02				25.06.97		10.10.94	20.12.00
Portugal	09.11.78	09.11.78	09.11.78	02.10.86			03.10.03		30.09.91	30.05.02	29.03.90	07.05.02
Romania	20.06.94	20.06.94	20.06.94	20.06.94	20.06.94		07.04.03			07.05.99	04.10.94	11.05.95
Russia	05.05.98	05.05.98	05.05.98		05.05.98						05.05.98	21.08.98
San Marino	22.03.89	22.03.89	22.03.89	22.03.89	22.03.89	25.04.03	25.04.03				31.01.90	05.12.96
Serbia and Montenegro	03.03.04	03.03.04	03.03.04	03.03.04	03.03.04	03.03.04	03.03.04				03.03.04	11.05.01
Slovakia	18.03.92	18.03.92	18.03.92	18.03.92	18.03.92				22.06.98		11.05.94	14.09.95
Slovenia	28.06.94	28.06.94	28.06.94	28.06.94	28.06.94		04.12.03			07.05.99	02.02.94	25.03.98
Spain	04.10.79	27.11.90		14.01.85					06.05.80		02.05.89	01.09.95
Sweden	04.02.52	22.06.53	13.06.64	09.02.84	08.11.85		22.04.03		17.12.62	29.05.98	21.06.88	09.02.00
Switzerland	28.11.74			13.10.87	24.02.88		03.05.02				07.10.88	21.10.98
"the former Yugoslav Republic of Macedonia"	10.04.97	10.04.97	10.04.97	10.04.97	10.04.97	**13.07.04**	**13.07.04**				06.06.97	10.04.97
Turkey	18.05.54	18.05.54		12.11.03					24.11.89		26.02.88	
Ukraine	11.09.97	11.09.97	11.09.97	04.04.00	11.09.97		11.03.03				05.05.97	26.01.98
United Kingdom	08.03.51	03.11.52		20.05.99			10.10.03		11.07.62		24.06.88	15.01.98

Updated: 15.12.04
Ratifications between **01.07.04** and **30.11.04** are highlighted

Full information on the state of signatures and ratifications of Council of Europe conventions can be found on the Treaty Office's Internet site: http://conventions.coe.int/

Crime and Economy



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